

72 Am. Jur. 2d State and Local Taxation Eleven LX A Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 4148

West's Key Number Digest, [Taxation](#) 🔑 3085, 3086, 3092, 3107 to 3110, 3114, 3117, 3132, 3140

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A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Constitutional Law](#) 🔑 4148

West's A.L.R. Digest, [Taxation](#) 🔑 3085, 3086, 3092, 3107 to 3110, 3114, 3117, 3132, 3140

Forms

[Am. Jur. Legal Forms 2d §§ 153:42, 238:21, 238:22](#)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 136, 139, 143](#)

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72 Am. Jur. 2d State and Local Taxation § 874

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

A. In General

§ 874. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4148

West's Key Number Digest, [Taxation](#)  3085, 3086, 3117, 3140

Forms

[Am. Jur. Legal Forms 2d § 153:42](#) (Collector's deed—Of property sold by irrigation district—For delinquencies in payment of assessments)

[Am. Jur. Legal Forms 2d § 238:21](#) (Tax certificate—Of purchaser at tax sale)

[Am. Jur. Legal Forms 2d § 238:22](#) (Tax deed—For land purchased at tax sale)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 136](#) (Complaint, petition, or declaration—To compel issuance of tax deed to holder of tax sale certificate)

In some jurisdictions, the deed is not delivered until the expiration of the period of redemption, and the purchaser's right or title is evidenced by a certificate of sale issued by the official conducting the sale.¹ Such certificate should be executed in the form prescribed by statute.² Under some statutes, however, a substantial compliance with the prescribed form is all that is required.³

Some courts hold that a delay in making the certificate beyond what is reasonably necessary will invalidate the sale.⁴ Other courts hold that the certificate of sale is a mere memorandum of the sale for the benefit of the purchaser, and failure to execute and deliver the certificate within a reasonable time after the sale does not affect the validity of the sale.⁵ While a tax deed

gives the holder color of title and the right to reimbursement on redemption,⁶ the holder of a certificate of sale has, prior to the issuance of the tax deed, merely an inchoate right or lien which can ripen into title only upon compliance with the statutory requisites and procedure,⁷ and no greater right or title may be created thereby than is authorized by statute.⁸ Such rights as are given, however, are contract rights within the protection of the constitutional guaranty against the impairment of contract obligations.⁹ The issuance to the purchaser of a certificate of purchase of property for delinquent taxes does not affect the delinquent property owner's legal or equitable title.¹⁰ Under some statutes, a certificate of sale for taxes is prima facie evidence of a valid sale, without proof of a precedent judgment.¹¹ The tax certificate evidences a lien against the property for the entire amount that the purchaser paid.¹²

CUMULATIVE SUPPLEMENT

Cases:

Tax deed proceedings require strict compliance with statutory requirements because they implicate an owner's fundamental interests. MCA 15-16-401, 15-16-403, 15-17-121(4, 5), (7)(a), 15-17-214, 15-17-323, 15-18-211, 15-18-212, 15-18-214, 15-18-411(1), 15-18-412(2)(a), 71-3-101(2). [RN & DB, LLC v. Stewart](#), 2015 MT 327, 362 P.3d 61 (Mont. 2015).

Purchaser of tax sale certificate under bid-down procedure was limited to foreclose only upon its undivided 1% interest in property, rather than 100% interest, and therefore foreclosure decree that stated property would be sold as upon execution in entire tract erroneously treated purchaser's interest as 100%; even though purchaser chose judicial foreclosure method to obtain deed to property instead of tax deed method, it would have been unjust to award interest in entire property to purchaser who acquired tax sale certificate by bid for less than 100% interest, and it would have been unfair to potential bidders for purchaser to receive 100% interest when purchaser became purchaser only because it offered to pay taxes due for smallest interest in property. [Neb. Rev. Stat. §§ 77-1801 et seq., 77-1807, 77-1818, 77-1901 et seq. \(2009\)](#). [Adair Asset Management, L.L.C. v. Terry's Legacy, LLC](#), 293 Neb. 32, 875 N.W.2d 421 (2016).

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Footnotes

- 1 [Baird v. Stubbins](#), 58 N.D. 351, 226 N.W. 529, 65 A.L.R. 1009 (1929).
- 2 [Keller v. Houlihan](#), 32 Minn. 486, 21 N.W. 729 (1884).
- 3 [Nind v. Myers](#), 15 N.D. 400, 109 N.W. 335 (1906).
- 4 [Gilfillan v. Chatterton](#), 37 Minn. 11, 33 N.W. 35 (1887).
- 5 [Bruno v. Madson](#), 38 Utah 485, 113 P. 1030 (1911).
- 6 [Pickens v. Adams](#), 7 Ill. 2d 283, 131 N.E.2d 38, 56 A.L.R.2d 605 (1955).
- 7 [Blackford v. Judith Basin County](#), 109 Mont. 578, 98 P.2d 872, 126 A.L.R. 639 (1940).
As to the rights and title of the purchaser, generally, see § 848.
- 8 [Budge v. City of Grand Forks](#), 1 N.D. 309, 47 N.W. 390 (1890).
- 9 § 869.
- 10 [Phoenix Bond & Indem. Co. v. Pappas](#), 194 Ill. 2d 99, 251 Ill. Dec. 654, 741 N.E.2d 248 (2000).
- 11 [Fickett v. Hohlfeld](#), 390 A.2d 469 (Me. 1978).
- 12 [Calhoun v. Jennings](#), 512 N.E.2d 178 (Ind. 1987).

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72 Am. Jur. 2d State and Local Taxation § 875

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

A. In General

§ 875. Application for deed; notice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 4148

West's Key Number Digest, [Taxation](#) 🔑 3092

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 139](#) (Petition or application—By holder of tax sale certificate—Application for order for issuance of tax deed)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 143](#) (Notice—By holder of tax certificate—Filing of petition for issuance of tax deed)

Courts are careful in tax deed cases to ensure strict compliance with the tax lien statute.¹ This is so because the issuance of the tax deed is often the final act in the execution of the power to sell land for delinquent taxes, and its validity depends on strict compliance with the statutory provisions which authorize its execution,² including giving notice of the application.³ Strict compliance with the notice requirements is required in order to satisfy due process requirements.⁴ Notice of a tax deed upon a property owner is jurisdictional, and failure to make the mandatory notice renders the tax deed absolutely void.⁵

Observation:

One court has held that the failure of the alleged owner of the property to receive the requisite statutory notice did not deprive the court of jurisdiction to order issuance of a tax deed to the property.⁶

According to some courts, acquisition of knowledge of an application for a tax deed is not the equivalent of the statutory notice required before the issuance of such a deed.⁷ Furthermore, where the statute requires the service of notice upon both the owner and the occupant of the property, the failure to give due notice to one party entitled thereto may be taken advantage of by another who is entitled to notice even though the latter has received due notice.⁸ According to other courts, however, the property owner's actual knowledge of a sale, in time to protect his or her due process rights, is sufficient to overcome deficiencies in the formal notice requirements.⁹

One claiming under a tax deed has the burden of proving compliance with a statute making the issuance of the deed conditional on the publication of a notice of the fact of the application therefor.¹⁰

A single notice of a petition for a tax deed to joint owners of record listed at a single address satisfies due process notice requirements.¹¹

One court has held that, under the governing statute, although the former owner of the property is entitled to notice prior to issuance of the tax deed, the mortgagee of record is not entitled to notice.¹² Another court has held that due process requires that known parties, including mortgagees, whose rights would be affected by a tax sale be afforded notice reasonably calculated to apprise them of the pendency of the action.¹³ Thus, due process requires that the mortgagee receive actual notice of a tax deed, of the mortgagee's right to redeem, and of the consequences of not doing so.¹⁴ In such a situation, failure to give the proper notice renders the tax sale an absolute nullity.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Beneficiaries of trust that held last recorded deed for property were entitled to notice prior to issuance of tax deed; beneficiaries were identified as beneficial owners of land trust in mortgage document recorded in recorder's office. S.H.A. 35 ILCS 200/22–10. *In re Application of County Collector for Judgment, Order of Sale Against Lands, Lots Returned Delinquent for Nonpayment of General Taxes for Year 2009*, 395 Ill. Dec. 894, 39 N.E.3d 361 (App. Ct. 4th Dist. 2015).

Using property index number (PIN) as certificate number in notice form prepared by county clerk strictly complied with notice requirements prescribed by Property Tax Code for tax-deed purchases, though it could duplicate information called for elsewhere on notices and though county did not specifically designate a number for its tax-sale certificates; PIN identified parcel of property for assessment and taxation purposes, placing PIN at top of certificate conveyed more information more immediately

than generic number chosen at random, using PIN as certificate number provided public access given that PIN system was open for inspection and available to the public, and legislature had approved of using PINs as administrative tool given that PINs could be used to automate office of recorder. 35 Ill. Comp. Stat. Ann. 200/22-5, 200/22-10, 200/22-20, 200/22-25. In re Application of Skidmore, 2018 IL App (2d) 170369, 421 Ill. Dec. 61, 99 N.E.3d 61 (App. Ct. 2d Dist. 2018).

Tax sale purchaser complied with statutory notice requirements for obtaining a treasurer's tax deed, where purchaser sent notice by certified mail, return receipt requested, to address where property tax statement was mailed, and purchaser then published notice in newspaper in county in which property was located when the mailed notice was returned as unclaimed, even if purchaser knew that taxpayer lived in different county. Neb. Rev. Stat. §§ 77-1832, 77-1834. HBI, L.L.C. v. Barnette, 305 Neb. 457, 941 N.W.2d 158 (2020).

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Footnotes

- 1 [Tacke v. Montana Lakeshore Properties, LLC](#), 2011 MT 197, 361 Mont. 390, 260 P.3d 128 (2011).
- 2 [Montana Earth Resources Ltd. Partnership v. North Blaine Estates, Inc.](#), 1998 MT 254, 291 Mont. 216, 967 P.2d 376 (1998).
- 3 [In re County Collector](#), 322 Ill. App. 3d 88, 255 Ill. Dec. 30, 748 N.E.2d 734 (1st Dist. 2001).
As to notice of expiration of time to redeem, see §§ 911 to 921.
- 4 [Jarzew, LLC v. Green Tree Servicing, LLC](#), 2009 Ark. App. 324, 308 S.W.3d 161 (2009); [Pitts v. Delaware County Tax Claim Bureau](#), 967 A.2d 1047 (Pa. Commw. Ct. 2009).
- 5 [Valdez v. Occupants of 3908 SW 24th Street, Oklahoma City](#), 2011 OK 99, 270 P.3d 143 (Okla. 2011).
- 6 [Application of Dickey](#), 72 Ill. 2d 317, 21 Ill. Dec. 182, 381 N.E.2d 260 (1978).
- 7 [Jensen Livestock Co. v. Custer County](#), 113 Mont. 285, 124 P.2d 1013, 140 A.L.R. 658 (1942); [Garcia v. Ted Parks, L.L.C.](#), 2008 OK 90, 195 P.3d 1269 (Okla. 2008).
- 8 [Jensen Livestock Co. v. Custer County](#), 113 Mont. 285, 124 P.2d 1013, 140 A.L.R. 658 (1942).
- 9 [In Re Tax Sale of Real Property Situate in Paint Tp., Somerset County](#), 865 A.2d 1009 (Pa. Commw. Ct. 2005), as amended, (Jan. 18, 2005).
- 10 [Gates v. Morris](#), 123 W. Va. 6, 13 S.E.2d 473, 134 A.L.R. 791 (1941).
- 11 [Tax Certificate Investments, Inc. v. Smethers](#), 714 N.E.2d 131 (Ind. 1999).
- 12 [Calhoun v. Jennings](#), 512 N.E.2d 178 (Ind. 1987).
- 13 [Harpagon MO, LLC v. Clay County Collector](#), 335 S.W.3d 99 (Mo. Ct. App. W.D. 2011).
- 14 [First NH Bank v. Town of Windham](#), 138 N.H. 319, 639 A.2d 1089 (1994).
- 15 [Padilla v. Schwartz](#), 11 So. 3d 6 (La. Ct. App. 4th Cir. 2009), amended on reh'g, (Apr. 15, 2009).

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72 Am. Jur. 2d State and Local Taxation § 876

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

A. In General

§ 876. Form, execution, and recording of deed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4148

West's Key Number Digest, [Taxation](#)  3110

Forms

[Am. Jur. Legal Forms 2d § 238:22](#) (Tax deed—For land purchased at tax sale)

A tax deed in a form sanctioned by years of usage during which time the court has sustained many such deeds without a suggestion of their invalidity is sufficient.¹ If, however, the deed does not have the seal of the officer executing it or of the municipal corporation for which the officer is acting, as required by statute,² or is not acknowledged in the manner required by statute,³ it is void on its face.⁴

Observation:

According to some courts, however, statutes establishing the form for a tax deed may merely require that the seal be affixed and will not necessarily require that the seal be entirely legible.⁵

A county treasurer may execute a tax deed to only a part of an entire lot sold for taxes where the legal owner of the remaining part has exercised the statutory right to redeem that part only.⁶

The jurisdiction of a county treasurer to issue a tax deed, under a statute providing that no such deed will issue until the purchaser has filed with the county treasurer an affidavit showing that the statutory notice has been given as required, arises solely from the affidavits of service filed with the treasurer and not merely from the fact of service or from the treasurer's knowledge of it otherwise than through the affidavits.⁷

When the purchaser is not entitled to a deed until the period of redemption has expired, a tax deed issued before the expiration of such period is void, and its invalidity is not cured by the owner's failure to redeem within the statutory period.⁸ However, a tax deed is not void because it was executed after the date fixed by the notice for issuance of such a deed since the right to redeem continues beyond the time fixed by the notice.⁹

When the statutes require deeds to be indexed, a tax deed must be indexed in the same manner as ordinary conveyances in order to constitute constructive notice to other purchasers.¹⁰

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Footnotes

- 1 [Charland v. Trustees of Home for Aged Women, 204 Mass. 563, 91 N.E. 146 \(1910\).](#)
- 2 [Deputron v. Young, 134 U.S. 241, 10 S. Ct. 539, 33 L. Ed. 923 \(1890\); Quimby v. Quimby, 118 N.H. 907, 395 A.2d 1247 \(1978\).](#)
- 3 [Mathews v. Blake, 16 Wyo. 116, 92 P. 242 \(1907\).](#)
- 4 [Smith v. Dwight, 80 Or. 1, 148 P. 477 \(1915\).](#)
- 5 [Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 \(2007\).](#)
- 6 [Consolidated Motors v. Skousen, 56 Ariz. 481, 109 P.2d 41, 132 A.L.R. 1040 \(1941\).](#)
- 7 [Jensen Livestock Co. v. Custer County, 113 Mont. 285, 124 P.2d 1013, 140 A.L.R. 658 \(1942\).](#)
- 8 [Griffin v. Jackson, 145 Mich. 23, 108 N.W. 438 \(1906\).](#)
- 9 [Mitchell v. Espinosa, 125 Colo. 267, 243 P.2d 412 \(1952\).](#)
- 10 [Hiles v. Atlee, 80 Wis. 219, 49 N.W. 816 \(1891\).](#)

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72 Am. Jur. 2d State and Local Taxation § 877

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

A. In General

§ 877. Description of land and designation of grantee

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 4148

West's Key Number Digest, [Taxation](#) 3107 to 3109

A tax deed must contain a description of the land sold, which should be certain in itself or at least capable of being made certain by matters referred to in the deed itself as relating to the description, or otherwise contain sufficient data to enable the purchaser to make a reasonably accurate identification of the property.¹ In other words, a tax deed is sufficient if the description itself furnishes the key through which the land might be definitely located by proof from elsewhere.² Deeds may describe the parcels sold by lot or survey numbers, the street and side of the street on which located, and the names of all abutting owners, with the general points of the compass on which the land of abutting owners lay, but without further designation by metes and bounds and without reference to a plan upon which the lots as numbered could be found.³ At any rate, a tax deed may be declared invalid for want of a sufficient legal description of the land involved⁴ and will be void for uncertainty where the deed is internally inconsistent.⁵

The sufficiency of the description is a question of fact.⁶ A heightened standard does not apply, however, when gauging the sufficiency of property descriptions contained in deeds.⁷

The deed must contain the name of the person to whom the land was assessed⁸ and the name of the grantee in the deed,⁹ but a deed is not necessarily void because of an inept description of the grantee, such as where only the initial letter of the grantee's first name is set forth¹⁰ or where the conveyance is to partners, and they are designated by the firm name provided that they

can be identified.¹¹ The failure to state the grantee's residence will not render the deed void unless a statute requires that the grantee's residence be stated.¹²

A description in a tax deed that is so vague and uncertain that it is impossible to determine what interest is at stake does not give sufficient notice.¹³ A description is insufficient where several different land configurations and shapes can be drawn from the description.¹⁴

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Footnotes

- 1 Sherry v. McKinley, 99 U.S. 496, 25 L. Ed. 330, 1878 WL 18275 (1878); Town of Orient v. Dwyer, 490 A.2d 660 (Me. 1985).
- 2 J. Michael Enterprises, Inc. v. Oliver, 101 Ark. App. 48, 270 S.W.3d 388 (2007).
- 3 Consolidated Motors v. Skousen, 56 Ariz. 481, 109 P.2d 41, 132 A.L.R. 1040 (1941) (description held sufficient); Linville v. Russell, 168 Colo. 459, 452 P.2d 18 (1969) (description held sufficient).
- 4 J. Michael Enterprises, Inc. v. Oliver, 101 Ark. App. 48, 270 S.W.3d 388 (2007).
- 5 Harpagon Company, LLC v. Gelfond, 279 Ga. 59, 608 S.E.2d 597 (2005) (deed containing two different property descriptions).
- 6 City of Boston v. Boston Port Development Co., 308 Mass. 72, 30 N.E.2d 896, 133 A.L.R. 515 (1941).
- 7 AIC Management v. Crews, 246 S.W.3d 640 (Tex. 2008).
- 8 Bradford v. Durham, 54 Or. 1, 101 P. 897 (1909).
- 9 Reed v. Reed, 98 Miss. 350, 53 So. 691 (1910).
- 10 Ogden v. Bemis, 125 Ill. 105, 17 N.E. 55 (1888).
- 11 Taylor v. Danley, 83 Kan. 646, 112 P. 595 (1911) (noting that extrinsic evidence may be used).
- 12 Lincoln Mortgage & Trust Co. v. Davis, 76 Kan. 639, 92 P. 707 (1907).
- 13 Yetter v. Gallatin County, 198 Mont. 243, 645 P.2d 941 (1982).
- 14 Overby v. Cavanaugh, 434 So. 2d 1365 (Miss. 1983).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 878

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

A. In General

§ 878. Presumption of validity of ancient deed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 4148

West's Key Number Digest, [Taxation](#) 3117, 3132

The antiquity of a tax deed, when no possession has been taken under it, creates no presumption in its favor; the recital in such a deed does not prove its authenticity or validity, and the performance of all the acts necessary to carry out a valid tax sale must be affirmatively proved.¹ When, however, there has been uninterrupted possession under a tax deed for a long period of years, the deed and its recitals are evidence from which compliance with the requirements of law with respect to the sale of land for nonpayment of taxes may be presumed, and the question of whether such requirements have been complied with is for the jury upon all the evidence in the case.² The antiquity of the deed is not in itself, apart from its recitals, evidence of the validity of the sale, and when it can be inferred from the recitals in the deed that the sale was not conducted in accordance with the requirements of law, the sale will be void.³

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Footnotes

- 1 [Land v. Banks](#), 254 S.W. 786, 30 A.L.R. 1 (Tex. Comm'n App. 1923).
As to the admissibility of ancient documents, generally, see [Am. Jur. 2d, Evidence §§ 1203 to 1206](#).
- 2 [Van Gundy v. Shewey](#), 90 Kan. 253, 133 P. 720 (1913).
- 3 [Barnes v. Boardman](#), 149 Mass. 106, 21 N.E. 308 (1889).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 879

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

A. In General

§ 879. Issuance of supplementary deed when original is defective or invalid

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 4148

West's Key Number Digest, [Taxation](#) 3114

After a sale of land for nonpayment of taxes, carried out in accordance with law and in compliance with all conditions necessary to entitle the purchaser to a tax deed, the power of the collector to execute and deliver a valid deed is not exhausted by the execution and delivery of an invalid one; if the deed first delivered is defective and invalid, the collector may execute and deliver a substitute deed, which, if drawn up in accordance with the statutory requirements, will be as effective to pass the title as if the prior invalid deed had never been delivered.¹ The length of time that has elapsed since the first deed was issued does not affect the right to issue a second one.² The collector may make a valid substitute deed even after his or her term of office has expired,³ or the collector's successor in office may make it.⁴ The collector's power to make a second deed is permitted only for the purpose of correcting errors in the first, to the end that the recitals may conform to the tax record and the facts of the case; therefore, a second deed that is made, not to correct a mistake but for the purpose of perverting the truth and falsifying the record, is void and of no avail to the purchaser.⁵ When the grantee under the first and invalid deed has conveyed away the property, the substitute deed should nevertheless be made to the grantee since the grantee had no title to convey, and the deed does not operate as an assignment of his or her rights under the sale.⁶ When the first deed is invalid, the period of limitations within which an owner may attack a tax deed begins to run from the execution of the second deed.⁷

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Footnotes

¹ [Huffman v. Henderson Co.](#), 184 Ark. 278, 42 S.W.2d 221 (1931).

- 2 Thornton v. Smith, 88 Ark. 543, 115 S.W. 677 (1909).
3 Ozark Land & Lumber Co. v. Franks, 156 Mo. 673, 57 S.W. 540 (1900).
4 Gibson v. Pekarek, 25 S.D. 281, 126 N.W. 597 (1910), on reh'g, 27 S.D. 423, 131 N.W. 728 (1911).
5 Fox v. Townsend, 152 Cal. 51, 91 P. 1004 (1907); Vaughan v. Stone, 55 Iowa 213, 7 N.W. 521 (1880).
6 Gibson v. Pekarek, 25 S.D. 281, 126 N.W. 597 (1910), on reh'g, 27 S.D. 423, 131 N.W. 728 (1911).
7 Young v. Gibson, 80 Kan. 264, 81 Kan. 185, 105 P. 3 (1909).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 880

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

A. In General

§ 880. Issuance of supplementary deed when original is defective or invalid—Remedy compelling issuance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 4148

West's Key Number Digest, [Taxation](#) 3114, 3140

The remedy of a person who has received a defective tax deed is to apply to the collector for a substitute deed in proper form rather than to a court of equity to have the defective deed reformed.¹ Generally, equity will not entertain a suit to reform a defective tax deed.² The proper officer may execute and issue a new substitute tax deed in place of an original defective or invalid one.³ Such officer may be compelled to issue a valid tax deed in substitution for a defective or invalid one, providing that the proceedings leading up to the issuance of the defective one were in all things valid,⁴ and the purchaser was not at fault.⁵

The purchaser is entitled of right to a valid deed and may compel the officer to perform this duty by a writ or order of mandamus.⁶ However, a quitclaim deed from the grantee of the invalid tax deed to a subsequent purchaser is not such an assignment of the tax certificate as authorizes the execution of a new deed to the assignee, and no action can be maintained by such subsequent grantee in a quitclaim deed to compel the issuance of a new tax deed.⁷ Although there is authority to the contrary,⁸ the fact that when the defective deed was issued the purchaser deposited a certificate of purchase, which entitled the purchaser to the issuance of the deed, does not bar the purchaser's right to have a substitute deed issued correcting defects in the original one because the purchaser's certificate may not be deemed canceled until a valid deed is issued.⁹

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Footnotes

1 Baker v. Lane, 82 Kan. 715, 109 P. 182 (1910); Batelle v. Knight, 23 S.D. 161, 120 N.W. 1102 (1909).
2 Am. Jur. 2d, Reformation of Instruments § 32.
3 § 879.
4 State v. Fouts, 26 N.D. 599, 145 N.W. 97 (1914).
5 Klokke v. Stanley, 109 Ill. 192, 1884 WL 9782 (1884).
6 Am. Jur. 2d, Mandamus § 274.
7 State ex rel. White v. Winn, 19 Wis. 304, 1865 WL 2038 (1865).
8 Baldwin v. Merriam, 16 Neb. 199, 20 N.W. 250 (1884).
9 State v. Fouts, 26 N.D. 599, 145 N.W. 97 (1914).

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72 Am. Jur. 2d State and Local Taxation Eleven LX B Refs.

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

B. Recitals in Deed

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3099](#), [3103](#), [3117](#), [3130](#), [3134](#), [3136](#), [3162\(4\)](#)

A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#)  [3099](#), [3103](#), [3117](#), [3130](#), [3134](#), [3136](#), [3162\(4\)](#)

Forms

[Am. Jur. Legal Forms 2d § 238:22](#)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 158](#)

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72 Am. Jur. 2d State and Local Taxation § 881

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

B. Recitals in Deed

§ 881. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3099](#), [3103](#), [3117](#), [3162\(4\)](#)

Forms

[Am. Jur. Legal Forms 2d § 238:22](#) (Tax deed—For land purchased at tax sale)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 158](#) (Complaint, petition, or declaration—Allegation—Insufficiency of tax deed)

A tax deed, to be valid, must set out a statement of performance of all acts which are essential to the existence of a legal cause for selling at the time when the sale was made and the performance of those acts by the tax authorities; its terms must satisfy a reasonable mind without resort to extrinsic evidence that a valid cause of sale in fact existed.¹

A tax deed must state facts and not conclusions of law.² However, some courts hold that the recitals in a tax deed may be in the form of conclusions of law, such as where it is stated that the sale took place after due advertisement, as required by law, without specifically setting forth what was actually done.³ A tax deed which does not show upon its face the amount for which the lot or tract of land is sold,⁴ or which shows a sale in a manner other than that prescribed by statute, is void on its face.⁵ Thus, also, a tax deed which, while stating the amount of the tax due for each of the lots conveyed, omits any reference to the specific costs therefor is invalid.⁶ However, a tax deed need not state that the land was offered at public sale if it indicates

therein whether the sale was public or private.⁷ The failure of a tax deed expressly to recite the county and state is not fatal to the description since it is susceptible of explanation.⁸

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Footnotes

- 1 [Geekie v. Kirby Carpenter Co.](#), 106 U.S. 379, 1 S. Ct. 315, 27 L. Ed. 157 (1882).
- 2 [Charland v. Trustees of Home for Aged Women](#), 204 Mass. 563, 91 N.E. 146 (1910).
- 3 [Coles' Heirs v. Jamerson](#), 112 Va. 311, 71 S.E. 618 (1911).
- 4 [Elerick v. Reed](#), 1925 OK 866, 113 Okla. 195, 240 P. 1045, 44 A.L.R. 474 (1925).
- 5 [Murphy v. Wilson](#), 37 N.D. 300, 163 N.W. 820 (1917).
- 6 [Spencer v. Kilbourn](#), 80 R.I. 38, 90 A.2d 782 (1952).
- 7 [Podewitz v. Gering Nat. Bank](#), 171 Neb. 380, 106 N.W.2d 497 (1960).
- 8 [Brannan v. Henry](#), 142 Ala. 698, 39 So. 92 (1905).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 882

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes


LX. Certificate of Sale and Tax Deed

B. Recitals in Deed

§ 882. Effect at common law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3134](#), [3136](#)

The recitals in a tax deed of the circumstances the occurrence of which authorized the collector to sell the property, and of the collector's performance of the acts required by law to effect a sale of property for nonpayment of taxes, are, in the absence of a statute to the contrary, not even prima facie evidence of the truth of the facts, and the title conveyed can be established by the holder of the deed or by one claiming under the holder only by independent proof of the performance of all of the conditions precedent to a valid sale.¹ Such recitals may be used to prove the invalidity of the sale,² but except so far as they may be given evidentiary effect by statute in favor of its validity, the recitals of a tax deed furnish no evidence of the existence, legality, or validity of the proceedings leading up to the sale of the land for taxes; the burden is upon one claiming under a tax deed to prove compliance with the law authorizing its execution.³ A tax deed, absent evidence that the tax liens were properly foreclosed, is not reliable evidence of title.⁴

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Footnotes

- 1 [Games v. Stiles ex dem. Dunn](#), 39 U.S. 322, 10 L. Ed. 476, 1840 WL 4599 (1840); [Blakemore v. Cooper](#), 15 N.D. 5, 106 N.W. 566 (1905).
- 2 [French v. Edwards](#), 80 U.S. 506, 20 L. Ed. 702, 1871 WL 14835 (1871).
- 3 [Williams v. Peyton's Lessee](#), 17 U.S. 77, 4 L. Ed. 518, 1819 WL 2206 (1819); [Larson v. Dickey](#), 39 Neb. 463, 58 N.W. 167 (1894).
- 4 [Giobbi v. Bramson](#), 560 A.2d 1079 (Me. 1989).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 883

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes


LX. Certificate of Sale and Tax Deed

B. Recitals in Deed

§ 883. Statutes making tax deed evidence of facts recited

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3134, 3136

Statutes have modified the common-law rule placing upon one claiming title to land under a tax deed the burden of showing that the law had been complied with by those in charge of the proceedings pursuant to which such deed was obtained and make a tax deed evidence of the regularity and legality of the sale.¹ Tax deeds may be made prima facie evidence not only of the grant but also of the regularity and legality of the sale of the land therein described.² The legislature cannot, however, make the deed conclusive evidence of the regularity of all proceedings required by law to be done to make a tax sale valid so far as they relate to matters which are jurisdictional in their nature.³

A statute making a tax deed presumptive evidence of the regularity of the proceedings applies to resale tax deeds.⁴ A statute under which a tax deed vests a good and absolute fee in the purchaser does not make the deed prima facie evidence of either the validity of the sale or the truth of the facts recited therein and thus does not relieve one claiming under the deed from alleging strict compliance with all requirements of the law necessary to effect a valid sale.⁵

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Footnotes

- ¹ [Marx v. Hanthorn](#), 148 U.S. 172, 13 S. Ct. 508, 37 L. Ed. 410 (1893); [Elder v. Chambliss](#), 195 Ga. 148, 23 S.E.2d 176 (1942).
- ² [Thomas v. Lawson](#), 62 U.S. 331, 21 How. 331, 16 L. Ed. 82, 1858 WL 9385 (1858); [Hefty v. Aldrich](#), 220 N.W.2d 840 (N.D. 1974).

- 3 § 887.
- 4 Wilson v. Kirkpatrick, 1930 OK 306, 144 Okla. 44, 289 P. 306 (1930).
- 5 Land v. Banks, 254 S.W. 786, 30 A.L.R. 1 (Tex. Comm'n App. 1923).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 884

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

B. Recitals in Deed

§ 884. Statutes making tax deed evidence of facts recited—Effect

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3130

Statutes may make tax deeds prima facie evidence not only of the regularity of the sale proceedings but also of all prior proceedings and thus make the deed prima facie evidence of the validity of the deed and the title of the purchaser.¹ Such statutes shift the burden of proof from the tax sale purchaser to the person who attacks the validity of the deed.² However, statutes making recitals in a deed prima facie evidence of regularity of the tax proceedings apply only to those facts required by law to be recited in the tax deed, and recitals of facts not required by law to be recited must be proved in the same manner as if the statute had not been enacted.³ Such statutes do not dispense with the performance of all the requirements prescribed by law to effect a sale for nonpayment of taxes.⁴ Thus when the tax deed appears upon its face to be void, such statutes have no application with respect to the apparently void feature.⁵ They will not cure a description of the land conveyed which is so imperfect as to fail to describe the land with reasonable certainty.⁶

When a statute makes a tax deed prima facie evidence of the regularity of the sale, it applies merely to the sale itself, and does not dispense with proof of a lawful assessment and other preliminary steps, and recitals in the deed of such preliminary steps are not evidence that there has been a lawful assessment and that the tax has not been paid.⁷ The statute referring to the evidentiary effect of the deed can apply only to the regularity and existence of such proceedings as are the foundation of the deed and cannot operate as evidence of the regularity and existence of any subsequent proceedings.⁸ Also, a party claiming under a tax deed must show that the land had not been redeemed when the deed was executed before it will be received as prima facie evidence of title.⁹

Footnotes

- 1 [Ontario Land Co. v. Wilfong](#), 223 U.S. 543, 32 S. Ct. 328, 56 L. Ed. 544 (1912).
- 2 [§ 885](#).
- 3 [County Bank of San Luis Obispo v. Jack](#), 148 Cal. 437, 83 P. 705 (1906).
As to whether a tax deed can be the subject of reformation, see [Am. Jur. 2d, Reformation of Instruments § 32](#).
- 4 [Thomas v. Lawson](#), 62 U.S. 331, 21 How. 331, 16 L. Ed. 82, 1858 WL 9385 (1858).
- 5 [Johnson v. Lake](#), 162 Miss. 227, 139 So. 455, 88 A.L.R. 262 (1932).
- 6 [Green v. McGrew](#), 35 Ind. App. 104, 72 N.E. 1049 (1905).
- 7 [Gage v. Bani](#), 141 U.S. 344, 12 S. Ct. 22, 35 L. Ed. 776 (1891).
- 8 [Ayers v. Lund](#), 49 Or. 303, 89 P. 806 (1907).
- 9 [Keely v. Sanders](#), 99 U.S. 441, 25 L. Ed. 327, 1878 WL 18260 (1878).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 885

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

B. Recitals in Deed

§ 885. Statutes making tax deed evidence of facts recited—Shifting of burden of proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3130

A.L.R. Library

[Comment Note.—Effect of presumption as evidence or upon burden of proof, where controverting evidence is introduced, 5 A.L.R.3d 19](#)

A statute making recitals in a tax deed prima facie evidence of the regularity of those proceedings shifts the burden of proof from the purchaser to the person who attacks the validity of the deed because of some alleged irregularity in connection with the proceedings.¹ The presumption arising from the deed may be rebutted² by proof of noncompliance with the necessary legal prerequisites of a tax sale.³ To restore the burden of proof to the owner of the tax title, the evidence of irregularity must be such as to require explanation or counterproof and must be of matters which are peremptory and not directory; it is not sufficient to cast a general doubt over the title, but it is necessary to point out some specific defect or to raise a reasonable presumption against the sufficiency of some particular act or of the nonperformance of some necessary duty.⁴ In some jurisdictions, statutes of this kind merely establish a rule of procedure changing the order of proof but not the burden of proof.⁵

CUMULATIVE SUPPLEMENT

Cases:

Collector's return to town clerk showing town's purchase of two 160-acre parcels at 1905 tax sale for \$10.74 was prima facie evidence that sale complied with statutory procedures and that tax collector did not exceed his authority and became undisputed conclusive evidence when unrebutted. R.S. ch. 10, §§ 73, 87 (1904). [Town of Carthage v. Friends of Maine's Mountains](#), 2016 ME 38, 134 A.3d 876 (Me. 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Turpin v. Lemon](#), 187 U.S. 51, 23 S. Ct. 20, 47 L. Ed. 70 (1902); [Peterson v. Reishus](#), 66 N.D. 436, 266 N.W. 417, 105 A.L.R. 724 (1936).
 - 2 [New York and Brooklyn Suburban Inv. Co. of New York v. Leeds](#), 100 Misc. 2d 1079, 420 N.Y.S.2d 639 (Sup 1979).
 - 3 [Gage v. Kaufman](#), 133 U.S. 471, 10 S. Ct. 406, 33 L. Ed. 725 (1890); [Glymph v. Smith](#), 180 S.C. 382, 185 S.E. 911, 105 A.L.R. 631 (1936).
 - 4 [Lacey v. Davis](#), 4 Mich. 140, 1856 WL 3898 (1856).
 - 5 [Welch v. Haley](#), 224 Mass. 261, 112 N.E. 860 (1916).
- As to the effect of a presumption on the burden of proof, generally, see [Am. Jur. 2d, Evidence § 172](#).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 886

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

B. Recitals in Deed

§ 886. Statutes making tax deed evidence of facts recited—Recitals required

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3099

To come within the meaning of a statute making a tax deed and the recitals therein evidence of the regularity of the tax proceedings, the deed must set forth enough of the proceedings to show that the circumstances existed which warranted a sale of the property and that the sale was carried out in accordance with law, and facts and not conclusions should be stated; general recitals by way of conclusions as to the regularity and legality of proceedings preliminary to the sale are not prima facie evidence of the regularity of each required step.¹ Thus, recitals in a deed that notice of the sale was given by publication according to law or that the land was offered for sale at public auction at the time and place² and in the manner required by law³ are generally insufficient. However, where, under the applicable statute, the tax deed is required only to contain a summary statement of the matter and proceedings, the recitals may properly take the form of legal conclusions, without setting forth the facts upon which these conclusions were based,⁴ such as by stating that the tax was duly assessed, that notice was duly given, or that the sale was held at the proper time and in the manner prescribed by law.⁵

A tax deed is fair on its face and thus sufficient even though it failed to recite, as a statute requires, the name of the county treasurer, the name of the purchaser, and the date of sale, and failed to state that the county treasurer had signed the certificate of sale.⁶

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Footnotes

- 1 Howard v. Tollett, 202 Ala. 11, 79 So. 309 (1918); Land v. Banks, 254 S.W. 786, 30 A.L.R. 1 (Tex. Comm'n App. 1923).
- 2 Land v. Banks, 254 S.W. 786, 30 A.L.R. 1 (Tex. Comm'n App. 1923).
- 3 Rush v. Lewis and Clark County, 37 Mont. 240, 95 P. 836 (1908).
- 4 Treese v. Ferguson, 1925 OK 876, 120 Okla. 235, 251 P. 91 (1925).
- 5 Henderson v. White, 69 Tex. 103, 5 S.W. 374 (1887).
- 6 Potts v. Miller, 73 S.D. 145, 39 N.W.2d 667 (1949).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 887

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LX. Certificate of Sale and Tax Deed

B. Recitals in Deed

§ 887. Statutes making tax deed conclusive evidence of matters preliminary to issuance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3134, 3136

The legislature may make a tax deed conclusive evidence of the regularity of proceedings leading up to the execution of the deed, with respect to matters not essential to the taxing power and which are not jurisdictional but merely directory.¹ The legislature is without power, by way of a curative statute, to make a tax deed conclusive evidence of a jurisdictional fact or a fact vital to the exercise of the power of taxation or of sale for the nonpayment of taxes and thus to cut off all rights to attack the tax title.² Statutes of this kind may accept in terms the payment of the tax prior to the sale from their curative effect.³

Whether a defect is jurisdictional is a judicial question and cannot be established by the statute itself.⁴

The grantee in a tax deed may waive the conclusive effect given the deed under the statutes, such as where he or she knowingly permits an irregularity in the proceedings to occur.⁵

A curative statute cannot validate a void tax deed.⁶

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Footnotes

- ¹ [De Treville v. Smalls](#), 98 U.S. 517, 25 L. Ed. 174, 1878 WL 18322 (1878); [Sheriff's Meadow Foundation, Inc. v. Bay-Courte Edgartown, Inc.](#), 401 Mass. 267, 516 N.E.2d 144 (1987) (procedural defects may be cured).

- 2 Marx v. Hanthorn, 148 U.S. 172, 13 S. Ct. 508, 37 L. Ed. 410 (1893); Marlea Corp. v. Casto, 161 W. Va.
498, 242 S.E.2d 923 (1978).
- 3 Bennett v. Hunter, 76 U.S. 326, 19 L. Ed. 672, 1869 WL 11496 (1869); Straus v. Foxworth, 16 N.M. 442,
117 P. 831 (1911), *aff'd*, 231 U.S. 162, 34 S. Ct. 42, 58 L. Ed. 168 (1913).
- 4 Larson v. Dickey, 39 Neb. 463, 58 N.W. 167 (1894).
- 5 Gates v. Morris, 123 W. Va. 6, 13 S.E.2d 473, 134 A.L.R. 791 (1941).
- 6 Hudson v. McDonald, 229 Mont. 426, 747 P.2d 221 (1987).

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72 Am. Jur. 2d State and Local Taxation § 888

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes


LX. Certificate of Sale and Tax Deed

B. Recitals in Deed

§ 888. Statutes making tax deed conclusive evidence of matters preliminary to issuance—Defects as to which deed may be made conclusive

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3134, 3136

Generally, the legislature may constitutionally provide that a tax deed is conclusive evidence of regularity with respect to the time of the sale and thus preclude any attack upon its validity upon the ground that the sale was had at a time other than that prescribed, or subsequent to the prescribed time without any proper adjournment to that date,¹ or that a tax deed is conclusive evidence that the sale was held at the proper place, was for the taxes of the proper year, and was for a proper amount.² However, there is authority for the view that a defense that the amount for which the land was sold included certain amounts as costs which should not have been included cannot be cut off.³

Statutes making appropriate recitals conclusive evidence as to the advertising of the property for sale according to law⁴ and the manner in which the sale was conducted⁵ are valid. Where notice of application for a tax deed or notice of expiration of the right to redeem from a tax sale is a jurisdictional prerequisite to the issuance of a deed, a statute making a tax deed conclusive evidence of matters preliminary to its issuance does not operate to protect the purchaser's title against a tax upon the ground of the absence of such notice.⁶ This requirement as to notice may, however, be considered directory.⁷

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Footnotes

¹ [Callanan v. Hurley](#), 93 U.S. 387, 23 L. Ed. 931, 1876 WL 19682 (1876); [Maxwell v. Page](#), 23 N.M. 356, 168 P. 492, 5 A.L.R. 155 (1917).

- 2 [Larson v. Dickey](#), 39 Neb. 463, 58 N.W. 167 (1894).
- 3 [Cooper v. Freeman Lumber Co.](#), 61 Ark. 36, 31 S.W. 981 (1895).
- 4 [Roth v. Gabbert](#), 123 Mo. 21, 27 S.W. 528 (1894).
- 5 [Callanan v. Hurley](#), 93 U.S. 387, 23 L. Ed. 931, 1876 WL 19682 (1876).
- 6 [Gates v. Morris](#), 123 W. Va. 6, 13 S.E.2d 473, 134 A.L.R. 791 (1941).
- 7 [Williams v. Van Pelt](#), 35 N.M. 286, 295 P. 418 (1930).

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72 Am. Jur. 2d State and Local Taxation Eleven LXI A Refs.

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

A. In General


[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Mines and Minerals](#)  55(4)
West's Key Number Digest, [Municipal Corporations](#)  981
West's Key Number Digest, [Taxation](#)  3000 to 3002, 3033, 3034, 3046, 3053

A.L.R. Library

A.L.R. Index, Tax Sales
West's A.L.R. Digest, [Mines and Minerals](#)  55(4)
West's A.L.R. Digest, [Municipal Corporations](#)  981
West's A.L.R. Digest, [Taxation](#)  3000 to 3002, 3033, 3034, 3046, 3053

Forms

[Am. Jur. Legal Forms 2d § 238:25](#)
[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 174, 178](#)

End of Document

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72 Am. Jur. 2d State and Local Taxation § 889

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

A. In General

§ 889. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3000 to 3002, 3034, 3046, 3053

Forms

[Am. Jur. Legal Forms 2d § 238:25](#) (Certificate of redemption)

Generally, tax statutes do not make the tax sale itself a final and irrevocable divestiture of the owner's title; rather, the statutes provide an opportunity, by means of redemption, whereby the former owner and certain others¹ may, notwithstanding that the proceedings upon the tax sale are valid and regular in every respect, defeat the sale and become revested with the title as complete and as unqualified as he or she had before the tax was assessed by repaying the amount which the purchaser paid for the property with interest and costs.² In some jurisdictions, this right of redemption is established by the constitution itself; such a constitutional provision which gives the right of redemption for a specified period of time after the sale is self-executing.³ Generally, however, the right of redemption depends solely upon a statutory grant and exists only so far as specifically provided for by statute.⁴ In some jurisdictions, the statute addressing redemption of property adjudicated to the State after a tax sale has been held inapplicable to redemption of property not adjudicated to the State.⁵

Tax redemption statutes are to be construed liberally in favor of the redemptioner and the exercise of the right of redemption.⁶ While substantial compliance with redemption statutes may be sufficient,⁷ the right of redemption is a statutory right exclusively, which can be claimed only under the circumstances and by compliance with the conditions prescribed in the statute.⁸

A property owner may finance the redemption of a tax sale certificate from any source and sell his or her interest for any amount to any person in the pre-foreclosure complaint stage.⁹

A tax lien purchaser is entitled to fully and reasonably litigate the validity of a delinquent taxpayer's redemption.¹⁰

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Footnotes

- 1 §§ 900 to 904.
- 2 Little v. U.S., 704 F.2d 1100 (9th Cir. 1983) (applying California law); Smith v. Spillman, 135 Ark. 279, 205 S.W. 107, 1 A.L.R. 136 (1918); Krahenbuhl v. Clay, 346 Mo. 111, 139 S.W.2d 970, 129 A.L.R. 1344 (1940); Kershner v. Sganzi, 45 N.M. 195, 113 P.2d 576, 134 A.L.R. 1290 (1941).
- 3 City of Lincoln v. Lincoln Street Ry. Co., 75 Neb. 523, 106 N.W. 317 (1906).
- 4 Dove Valley Business Park Associates, Ltd. v. Board of County Commissioners of Arapahoe County, 945 P.2d 395 (Colo. 1997); State ex rel. Dowling v. Butts, 111 Fla. 630, 149 So. 746, 89 A.L.R. 946 (1933); Skach v. Sykora, 6 Ill. 2d 215, 127 N.E.2d 453, 52 A.L.R.2d 1320 (1955); Lester v. J. & S. Inv. Co., 171 Mont. 149, 557 P.2d 299 (1976).
- 5 Hebert v. Hollier, 976 So. 2d 1256 (La. 2007).
- 6 Little v. U.S., 704 F.2d 1100 (9th Cir. 1983) (applying California law); State Dept. of Revenue v. Price-Williams, 594 So. 2d 48 (Ala. 1992); Dove Valley Business Park Associates, Ltd. v. Board of County Commissioners of Arapahoe County, 945 P.2d 395 (Colo. 1997); Hamilton v. Renewed Hope, Inc., 277 Ga. 465, 589 S.E.2d 81 (2003); In re Cook County Treasurer, 185 Ill. 2d 428, 235 Ill. Dec. 910, 706 N.E.2d 465 (1998); Osborn v. Harrison, 447 So. 2d 122 (Miss. 1984); Bowen v. McDonald, 276 Mont. 193, 915 P.2d 201 (1996); Albertson v. Leca, 447 A.2d 383 (R.I. 1982).
- 7 Page v. Burk, 582 S.W.2d 512 (Tex. Civ. App. Dallas 1979).
- 8 Hill v. Di Benedetto, 253 Ala. 229, 43 So. 2d 819 (1950); Word v. Grigsby, 206 Ark. 164, 174 S.W.2d 439 (1943); State v. McCollough, 85 Mont. 435, 279 P. 246, 66 A.L.R. 1033 (1929).
- 9 Simon v. Cronecker, 189 N.J. 304, 915 A.2d 489 (2007).
- 10 Leveraged Land Co., L.L.C. v. Hodges, 226 Ariz. 382, 249 P.3d 341 (2011).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 890

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

A. In General

§ 890. Mineral rights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Mines and Minerals](#)  55(4)

A.L.R. Library

[Applicability of tax redemption statutes to separate mineral estates, 56 A.L.R.2d 621](#)

In some jurisdictions, tax redemption statutes have been construed to authorize the owner of a separate mineral estate in land to make a redemption of the land generally.¹ However, a statute may specifically provide that when any duly assessed mineral rights have been forfeited on account of nonpayment of taxes, the redemption thereof is to be in the same manner as in the case of other real estate.²

The purchase at a tax sale by the owner of surface rights does not act as a redemption for the benefit of the owner of mineral rights, where the foreclosure is for taxes assessed prior to and after severance of the mineral interest, and the prior deed does not impose the obligation to pay the existing tax liens.³

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Footnotes

- 1 Steele v. Freel, 157 Fla. 223, 25 So. 2d 501 (1946); Cornelius v. Jackson, 1948 OK 61, 201 Okla. 667, 209 P.2d 166 (1948).
- 2 Skelly Oil Co. v. Johnson, 209 Ark. 1107, 194 S.W.2d 425 (1946).
- 3 Tippetts v. Gifford, 565 P.2d 117 (Wyo. 1977).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 891

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

A. In General

§ 891. How effected

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3000 to 3002, 3033, 3034

Generally, a deed is delivered to the purchaser within a few days after the sale, and the title passes to the purchaser subject to defeasance by redemption during the statutory period; during that period, the purchaser remains passive, and if the owner fails to exercise the right of redemption within the specified time, the title becomes absolute by force of the statute without any further proceedings in court or elsewhere to establish it.¹ While usually there must be either actual payment or a formal tender of the exact amount due, the purchaser's conduct may be such as to constitute a waiver of tender, in which case an offer to pay whatever is due and a refusal to accept the offer have the same effect as payment or tender.² To have a viable claim to redeem the property after a tax sale, the grantee needs either to pay or to tender the necessary sums unless the payment or tender is waived by the tax sale purchaser.³ The tender of the amount due in taxes is a prerequisite to the grantee's suit to redeem the property; the tax sale purchaser is entitled to an opportunity to accept the money and convey the property voluntarily before processes of the courts are invoked.⁴ The grantee is still obligated to pay the correct price in order to succeed in an action to redeem property after the tax sale even though the purchaser waives the need for a tender of the amount due.⁵

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Footnotes

- ¹ [Bundy v. Wills](#), 88 Neb. 554, 130 N.W. 273 (1911).
As to notice to redeem, see §§ [911](#) to [921](#).
- ² [Bundy v. Wills](#), 88 Neb. 554, 130 N.W. 273 (1911).
As to the medium of tender and objections on that ground, see [§ 894](#).

- 3 [Mark Turner Properties, Inc. v. Evans, 274 Ga. 547, 554 S.E.2d 492 \(2001\).](#)
- 4 [Mark Turner Properties, Inc. v. Evans, 274 Ga. 547, 554 S.E.2d 492 \(2001\).](#)
- 5 [Mark Turner Properties, Inc. v. Evans, 274 Ga. 547, 554 S.E.2d 492 \(2001\).](#)

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72 Am. Jur. 2d State and Local Taxation § 892

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

A. In General

§ 892. How effected—Payment to a public officer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3033

A.L.R. Library

[Effect of certificate, statement \(or refusal thereof\), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 178](#) (Order—Directing tax official to accept money tendered for redemption)

Most redemption statutes provide for redemption by payment to the county treasurer or some other designated public officer who is required to state the amount due to a person desirous of redeeming the property, and the amount so paid is then turned over to the holder of the tax title.¹ Such provisions are for the benefit of the owner or other interested person desiring to redeem

property from a tax sale; they relieve the owner from the necessity of seeking out the purchaser and from determining the true owner and holder of the tax title or tax certificate.²

Some courts hold that under statutes providing for payment of the redemption money to a public officer, the redemption can be effected only by paying or tendering payment of the redemption money to the officer designated in the statute and cannot be effected by tendering it to the tax purchaser.³ Other courts, however, considering the purpose and policy of tax redemption laws, and applying the rule of liberal interpretation and construction of such laws, do not regard provisions for redemption by payment of the redemption money to a public officer for the benefit of the purchaser as being so exclusive as to preclude a redemption by a tender of the necessary amount directly to the purchaser.⁴

A property owner fails to make an unconditional tender of the total amount owed to pay off the tax lien, as required to exercise the common-law right of redemption, by depositing funds in excess of the payoff amount with the county clerk prior to the foreclosure sale, where no particular purpose or person has been identified at the time that the funds are deposited, and the property owner does not inform the court or the lienholder that it was making full payment to redeem the property.⁵

CUMULATIVE SUPPLEMENT

Cases:

Defendant did not redeem property that was subject to foreclosure involving tax lien by unconditionally tendering total amount owed, and thus property was properly sold at auction; during the auction of the property the defendant stated that it "might be able to pay the taxes" and requested an adjournment, but it did not provide the funds for such payment. [NYCTL 2011-A Trust v. Da'Jue Properties Inc.](#), 132 A.D.3d 569, 2015 WL 6181614 (1st Dep't 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Krahenbuhl v. Clay](#), 346 Mo. 111, 139 S.W.2d 970, 129 A.L.R. 1344 (1940); [State v. McCollough](#), 85 Mont. 435, 279 P. 246, 66 A.L.R. 1033 (1929); [Kershner v. Sganzi](#), 45 N.M. 195, 113 P.2d 576, 134 A.L.R. 1290 (1941).
As to the refusal of an officer to accept payment, see § 851.
As to errors committed by the collecting officer, see § 852.
- 2 [Krahenbuhl v. Clay](#), 346 Mo. 111, 139 S.W.2d 970, 129 A.L.R. 1344 (1940).
- 3 [Gibson v. Pekarek](#), 25 S.D. 281, 126 N.W. 597 (1910), on reh'g, 27 S.D. 423, 131 N.W. 728 (1911).
- 4 [Krahenbuhl v. Clay](#), 346 Mo. 111, 139 S.W.2d 970, 129 A.L.R. 1344 (1940).
- 5 [NYCTL 1999-1 Trust v. 573 Jackson Ave. Realty Corp.](#), 13 N.Y.3d 573, 893 N.Y.S.2d 503, 921 N.E.2d 195 (2009), cert. denied, 130 S. Ct. 3466, 177 L. Ed. 2d 1055 (2010).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 893

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eleven. Sale of Land for Nonpayment of Taxes


LXI. Redemption

A. In General

§ 893. How effected—Purchase of tax title by owner of interest in land

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3033, 3034

The general rule that one who is obligated to pay the taxes on lands, but who omits to pay such taxes, cannot strengthen his or her title to such land by buying the tax title when the property is sold as a consequence of his or her omission to pay the taxes on it, such purchase merely operating as a payment of the taxes and not providing a new and paramount title,¹ operates in like manner in the case of a purchase of the tax title during the period of redemption.² Where the owner of a partial interest in the property under no obligation to pay the taxes, such as a remainderman, purchases the tax title during the period of redemption, the transaction will operate as a redemption.³

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Footnotes

- 1 [§ 842.](#)
- 2 [Callihan v. Russell, 66 W. Va. 524, 66 S.E. 695 \(1909\).](#)
- 3 [Callihan v. Russell, 66 W. Va. 524, 66 S.E. 695 \(1909\).](#)

End of Document

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72 Am. Jur. 2d State and Local Taxation § 894

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

A. In General

§ 894. Medium of payment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3033

Unless the redemption statutes expressly or by necessary implication provide otherwise, the redemption payment must be tendered in cash rather than by check, money order, or the like, if the tax sale purchaser or the collecting officer insists, and some statutes expressly provide that redemption must be made in lawful money.¹ However, the tax sale purchaser cannot complain of a practice by the officers not to insist upon payment in money.² Moreover, where a tender is actually made in good faith and refused, but without objection to the medium of payment or the sufficiency of the amount, the purchaser cannot afterwards question the validity of the tender on these grounds.³

Under some statutes, public authorities must accept bonds and matured interest coupons of municipal corporations, counties, and other taxing districts in redemption of land from tax sales; such statutes do not deny the equal protection of laws to other taxpayers or to creditors of the taxing body.⁴

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Footnotes

- ¹ [State v. McCollough](#), 85 Mont. 435, 279 P. 246, 66 A.L.R. 1033 (1929); [172 East 122 Street Tenants Ass'n v. Schwarz](#), 73 N.Y.2d 340, 540 N.Y.S.2d 420, 537 N.E.2d 1281 (1989) (payment by check is authorized); [Douglass v. Grace Bldg. Co., Inc.](#), 477 Pa. 289, 383 A.2d 937 (1978) (payment by uncertified personal check is authorized).
- ² [Thompson v. Crains](#), 294 Ill. 270, 128 N.E. 508, 12 A.L.R. 931 (1920).

As to the failure of a public officer to require compliance with the conditions of redemption, generally, see § 928.

3 Bundy v. Wills, 88 Neb. 554, 130 N.W. 273 (1911).

4 State ex rel. Dowling v. Butts, 111 Fla. 630, 149 So. 746, 89 A.L.R. 946 (1933).

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72 Am. Jur. 2d State and Local Taxation § 895

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

A. In General

§ 895. Conditions and restrictions upon exercise of right

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3000 to 3002, 3033

The right to redeem lands sold for taxes, while regarded with favor and liberally construed in favor of the redemptioner, is nevertheless a gratuity, which if granted may be restricted in the legislature's discretion.¹ One must bring himself or herself within such conditions and restrictions before he or she will be permitted to exercise the right given.² Hence, where the redemption statute requires tender of the purchase price and interest and the property had been purchased at the tax sale for the amount of a delinquent tax plus penalty, the owner must tender those amounts and interest thereon before there can be a complete redemption.³ A co-owner of immovable property held in indivision cannot generally pay his or her pro-rated portion of the taxes due and prevent the tax sale of the property; instead, the only means of preventing the tax sale, or redeeming the property, is to pay the outstanding amount in full.⁴

The statutes may make the payment of current taxes a condition precedent to the redemption of land sold for taxes.⁵ The owner of the property can redeem the property before delivery of a tax deed by paying the treasurer the amount shown on the certificate and all subsequent taxes along with the interest specified by statute.⁶ In some jurisdictions, the right to redeem property sold under a tax execution is conditioned upon the tender of the amount required for redemption, which must be made before the filing of the redemption action, must be continuous unless waived by declaration or conduct, and must be made to the party entitled to payment; this affords the new owner the opportunity to accept the money and convey the property voluntarily before processes of the courts are invoked to compel it to do that which it is required to do under the law and perhaps would do if afforded an opportunity.⁷

A tax sale purchaser that does not contest the taxpayers' right of redemption is entitled to payment from the taxpayers consisting of the original sum, plus costs, penalties, and any subsequent taxes, costs, or interest, together with the costs of the proceeding and counsel fee as the court deems reasonable.⁸ On the other hand, a redemptioner is not required to make payments to the tax-sale buyer in order to redeem under a statute requiring redemptioners to reimburse the buyers for insurance premiums paid on the property and for permanent or preservation improvements, where the buyer did not pay insurance premiums on the property, and the record reflected that the buyer either made no improvements or that any alleged improvements had no value.⁹

Observation:

A property owner is not required to comply with statutory requirements for obtaining a stay of proceedings upon a judgment of foreclosure, including a motion for stay and sum deposited with the court, as preconditions for exercising the common-law right of redemption following foreclosure of a tax lien.¹⁰

In some jurisdictions, a statute governing certificate of redemption imposes upon the state auditor a mandatory, nondiscretionary duty to charge a certification fee as a condition of the redemption of delinquent property that has been transferred to the auditor.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Estate of deceased property owner, whose property had been sold at a tax sale, substantially complied with statute governing redemption of property sold at a tax sale, even though its timely tender of payment, following the sudden death of estate administrator, was short by more than \$11,000, or about 12% of the total due; although estate could have obtained the unknown amount due from the tax assessor-collector, estate sought to be informed by tax-sale purchaser of the full amount before the deadline, and promised to promptly pay all amounts due, demonstrating a good faith effort to comply with statutory requirements. [Tex. Tax Code Ann. § 34.21\(e\)](#). [Sorrell v. Estate of Carlton](#), 593 S.W.3d 167 (Tex. 2019).

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Footnotes

- 1 [Word v. Grigsby](#), 206 Ark. 164, 174 S.W.2d 439 (1943); [Messer v. Lang](#), 129 Fla. 546, 176 So. 548, 113 A.L.R. 1073 (1937); [Levy v. McCay](#), 445 So. 2d 546 (Miss. 1984).
- 2 [Messer v. Lang](#), 129 Fla. 546, 176 So. 548, 113 A.L.R. 1073 (1937); [State ex rel. Dowling v. Butts](#), 111 Fla. 630, 149 So. 746, 89 A.L.R. 946 (1933); [State v. McCollough](#), 85 Mont. 435, 279 P. 246, 66 A.L.R. 1033 (1929).
- 3 As to the necessity for the exercise of the right within the time fixed by statute, see [§ 905](#).
- 4 [Word v. Grigsby](#), 206 Ark. 164, 174 S.W.2d 439 (1943).
- 5 [C & C Energy, L.L.C. v. Cody Investments, L.L.C.](#), 41 So. 3d 1134 (La. 2010).

- 5 [State v. Lawler](#), 53 N.D. 278, 205 N.W. 880 (1925).
- 6 [Ottaco Acceptance, Inc. v. Larkin](#), 273 Neb. 765, 733 N.W.2d 539 (2007); [Varsolona v. Breen Capital Services Corp.](#), 180 N.J. 605, 853 A.2d 865 (2004) (a property owner may redeem his or her property by paying the tax sale certificate (TSC) purchaser's expenses, including the subsequent taxes on the property, with interest).
- 7 [Community Renewal and Redemption v. Nix](#), 288 Ga. 439, 704 S.E.2d 759 (2011).
- 8 [Amy Realty v. Gomes](#), 839 A.2d 1232 (R.I. 2004) (also holding that the tax sale purchaser is entitled to seek a recovery from taxpayers for the net rents on the property for the period from the one-year anniversary of the tax sale to the date of the redemption).
- 9 [Espinoza v. Rudolph](#), 46 So. 3d 403 (Ala. 2010).
- 10 [NYCTL 1999-1 Trust v. 573 Jackson Ave. Realty Corp.](#), 13 N.Y.3d 573, 893 N.Y.S.2d 503, 921 N.E.2d 195 (2009), cert. denied, 130 S. Ct. 3466, 177 L. Ed. 2d 1055 (2010).
- 11 [Foster Foundation v. Gainer](#), 228 W. Va. 99, 717 S.E.2d 883 (2011).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 896

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

A. In General

§ 896. Redemption of part of land sold

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Municipal Corporations](#)  981

West's Key Number Digest, [Taxation](#)  3000 to 3002, 3033

Except as the redemption statutes provide otherwise, land sold as a unit at a tax sale must ordinarily be redeemed as a unit, and any asserted right to make a partial or proportional redemption must be founded in the language of the statutes.¹ Under some statutes, however, an owner of an undivided interest in land assessed as a unit may redeem his or her share by paying a proportionate amount of the whole tax.² In some jurisdictions, a minor's interest in land sold for taxes may be redeemed without redeeming the interest of others,³ particularly where provisions exist which give a minor additional time to redeem after reaching majority.⁴ Under some statutes, the owner of land sold for taxes may redeem a part of his or her own land without redeeming the whole.⁵ However, a tenant in common cannot make a partial redemption under a statute granting a right to redeem from a tax sale any part or portion of a lot or parcel of land which is owned in severalty.⁶ A determination of a county treasurer, in apportioning taxes chargeable to each portion of land which is held in severalty, made upon an application to redeem a portion of land, when made without giving due notice of the application therefor and affording opportunity to be heard to owners of interest in the land who would be directly affected by such determination, is invalid as a denial of due process of law.⁷

Assuming the validity of a statute providing for the redemption of a part or portion of the land, the question as to persons who are entitled to take advantage of such provisions and the circumstances under which the owner of part of the premises may redeem is a matter of statutory construction.⁸

Footnotes

- 1 [Sailer v. Mercer County](#), 75 N.D. 123, 26 N.W.2d 137 (1947); [Callihan v. Russell](#), 66 W. Va. 524, 66 S.E. 695 (1909).
As to the validity and effect of a single assessment of separate parcels of real estate belonging to different owners, see § 638.
As to redemption of one under disability who owns only a part or undivided interest in land, see § 904.
- 2 [Hallett v. Alexander](#), 50 Colo. 37, 114 P. 490 (1911); [State ex rel. Anderton v. Sommers](#), 242 Wis. 484, 8 N.W.2d 263, 145 A.L.R. 1324 (1943).
- 3 [Smith v. Pettus](#), 205 Ark. 442, 169 S.W.2d 586 (1943).
- 4 § 904.
- 5 [State ex rel. Dorst v. Sommers](#), 234 Wis. 302, 291 N.W. 523 (1940).
- 6 [State ex rel. Anderton v. Sommers](#), 242 Wis. 484, 8 N.W.2d 263, 145 A.L.R. 1324 (1943).
- 7 [State ex rel. Anderton v. Sommers](#), 242 Wis. 484, 8 N.W.2d 263, 145 A.L.R. 1324 (1943).
- 8 [Harris v. Harris](#), 195 Ark. 184, 112 S.W.2d 40 (1937).

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72 Am. Jur. 2d State and Local Taxation § 897

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

A. In General

§ 897. Tender or payment of redemption money under protest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3000 to 3002, 3033

A property owner has the right or privilege to pay the tax redemption money under protest, even though there is no statute authorizing the public authorities to accept redemption money under protest, and such privilege is not dependent upon statutory authority but is governed by principles applicable to the payment of taxes under protest.¹ Such a protest accompanying a tender for purposes of redeeming from a tax sale does not amount to imposition of a condition within the rule that a tender, to be effective, must be unconditional.²

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Footnotes

- ¹ [Jaynes v. Heron](#), 46 N.M. 431, 130 P.2d 29, 142 A.L.R. 1191 (1942).
As to the payment of taxes under protest, see [§ 971](#).
- ² [Jaynes v. Heron](#), 46 N.M. 431, 130 P.2d 29, 142 A.L.R. 1191 (1942).

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72 Am. Jur. 2d State and Local Taxation § 898

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

A. In General

§ 898. Operation and effect of redemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3000 to 3002, 3034

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 174](#) (Complaint, petition, or declaration—Allegation—Refusal of purchaser at tax sale to surrender tax sale certificate for cancellation after payment of delinquent taxes by redemptioner)

A tax redemption is valid upon the payment of taxes by anyone for any reason, and the consequence of such payment is that it inures to the benefit of the record title owner.¹ A redemption made in accordance with the governing statutes puts the owner in the same position that he or she was in before the tax sale occurred² and defeats any title conveyed to the purchaser at the tax sale.³ A redemption divests the tax-sale purchaser of the land of a possessory interest in the property.⁴ There can be no such thing as an innocent purchaser of land at a tax sale, or from one who buys at such sale, as against the statutory privilege of redemption, and one who buys without notice of facts not apparent on the record cannot on that account defeat a right of redemption extended beyond the normal period.⁵ Redemption cuts off the right of a tax sale purchaser who obtained an invalid tax deed to apply for and secure a valid tax deed.⁶ Even where the owner, intending to redeem the premises, fails to comply with the statutory conditions of redemption or to make the redemption within the time required, the purchaser's title may nevertheless be defeated when the owner can show that the failure to redeem was caused by reliance on erroneous or misleading information

given by tax officials.⁷ If property is not redeemed, the owner of the tax certificate may proceed in one of two ways: the owner can wait and obtain a deed of conveyance for the property, commonly known as a tax deed, or can obtain an order of foreclosure and compel the sale of the property.⁸

Practice Tip:

A certificate of redemption is prima facie evidence of the redemption of land from a tax sale.⁹ Because a tax lien redemption is complete when the certificate of redemption issues, an action challenging the validity of a redemption that has already occurred is not part of the redemption; rather, the post-redemption litigation, whether a new legal proceeding or an amended complaint in the ongoing foreclosure action, is separate from the redemption.¹⁰

When the title to land is forfeited to the State for nonpayment of taxes, the State holds the title solely for the payment of the taxes charged and chargeable thereon.¹¹ Upon redemption, the redemptioner does not get the State's title; rather, the State's title is extinguished by the redemption and the redemptioner gets the title existing prior to the State's title, subject to any encumbrances or liens existing at that time.¹²

CUMULATIVE SUPPLEMENT

Cases:

Reconveyance of property subject to delinquent-tax certification is in the nature of a redemption, and divests the county of its title to the property; it does not give the redeeming party any interest greater than the interest he previously held. West's [NRSA 361.585](#). [Building Energetix Corp. v. EHE, LP](#), 294 P.3d 1228, 129 Nev. Adv. Op. No. 6 (Nev. 2013).

Property owner who reacquired her property after it was acquired by the County by tax sale "redeemed" her property pursuant to applicable local law, and thus property was subject to same covenants, restrictions and easements that existed prior to tax sale. [Behar v. Wiblishauser](#), 99 A.D.3d 838, 953 N.Y.S.2d 51 (2d Dep't 2012).

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Footnotes

- 1 [Hebert v. Hollier](#), 976 So. 2d 1256 (La. 2007).
- 2 [Pratt v. Woolley](#), 117 R.I. 154, 365 A.2d 424 (1976).
- 3 [Krahenbuhl v. Clay](#), 346 Mo. 111, 139 S.W.2d 970, 129 A.L.R. 1344 (1940); [Mack v. Luebben](#), 215 Neb. 832, 341 N.W.2d 335 (1983); [Langhurst v. Langhurst](#), 49 N.M. 329, 164 P.2d 204 (1945); [Kershner v. Sganzi](#), 45 N.M. 195, 113 P.2d 576, 134 A.L.R. 1290 (1941); [Elk Garden Big Vein Coal Min. Co. v. Gerstell](#), 95 W. Va. 471, 121 S.E. 569, 33 A.L.R. 298 (1924).

4 Ross v. Rosen-Rager, 67 So. 3d 29 (Ala. 2010).
5 Bradbury v. Johnson, 104 Ark. 108, 147 S.W. 865 (1912).
6 Krahenbuhl v. Clay, 346 Mo. 111, 139 S.W.2d 970, 129 A.L.R. 1344 (1940).
7 §§ 928 to 931.
8 Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007).
9 Ross v. Rosen-Rager, 67 So. 3d 29 (Ala. 2010).
10 Leveraged Land Co., L.L.C. v. Hodges, 226 Ariz. 382, 249 P.3d 341 (2011).
11 Elk Garden Big Vein Coal Min. Co. v. Gerstell, 95 W. Va. 471, 121 S.E. 569, 33 A.L.R. 298 (1924).
12 Little v. U.S., 704 F.2d 1100 (9th Cir. 1983) (applying California law).

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72 Am. Jur. 2d State and Local Taxation § 899

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

A. In General

§ 899. Statutes giving former owner right to purchase property while in public ownership

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3000 to 3002

In some jurisdictions, the statutes give former owners of land which has been purchased by the county or other political subdivision under tax foreclosure proceedings the right to repurchase such property upon payment of taxes, penalties, and interest.¹ However, a subsequent grantee of the former owner does not, by exercising such owner's statutory right of repurchase, obtain a new title from the State.² Such a statute, providing that the former owner "may" purchase back the property upon the condition stated, while permissive as to the owner, imposes a mandatory obligation upon the county or other public body to sell.³ Such statutory right is not cut off by the judgment in a statutory action by the county to obtain a tax deed from the county treasurer on account of the unpaid taxes since such a right does not accrue until the issuance of the deed.⁴ Statutes of this kind do not violate constitutional inhibitions against the exchange, transfer, remission, or release of obligations or liabilities held or owned by the states or municipal corporations therein, and are not invalid as remitting, diminishing, or extinguishing public obligations, as releasing or discharging property from its proportionate share of taxes or as making donations or grants of taxes in violation of constitutional provisions.⁵ Neither does a statute permitting the former owner of property sold for taxes and held by a county to purchase such property by payment to the county of the full amount of the taxes, penalties, and interest for which such property was sold impair any contract obligation of the holder of the certificate although enacted subsequent to the tax sale.⁶

Observation:

The purchase of tax-acquired property from the county by the former owner is not a "redemption."⁷

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Footnotes

- 1 [Belmore v. State Tax Commission](#), 56 N.M. 436, 245 P.2d 149 (1952).
- 2 [Chavez v. Chavez](#), 56 N.M. 393, 244 P.2d 781, 30 A.L.R.2d 1236 (1952).
- 3 [Blackford v. Judith Basin County](#), 109 Mont. 578, 98 P.2d 872, 126 A.L.R. 639 (1940).
- 4 [Blackford v. Judith Basin County](#), 109 Mont. 578, 98 P.2d 872, 126 A.L.R. 639 (1940).
- 5 [Blackford v. Judith Basin County](#), 109 Mont. 578, 98 P.2d 872, 126 A.L.R. 639 (1940).
- 6 [Blackford v. Judith Basin County](#), 109 Mont. 578, 98 P.2d 872, 126 A.L.R. 639 (1940).
As to the validity of statutes changing rights with respect to holders of tax deed or tax certificates, generally, see §§ [869](#) to [871](#).
- 7 [Collier v. Kincheloe](#), 2008 MT 100, 342 Mont. 314, 180 P.3d 1157 (2008).
A property owner's purchase of property from the forfeited land commission, after the commission had purchased the property at a tax sale, was not a redemption, and could not resurrect the mortgage on the property that had been extinguished by the tax sale, where the purchase was made after expiration of the redemption period, and was made at the price the commission set, rather than by payment of the delinquent taxes, assessments, penalties, costs, and interest. [Federal Financial Co. v. Hartley](#), 380 S.C. 65, 668 S.E.2d 410 (2008).

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72 Am. Jur. 2d State and Local Taxation Eleven LXI B Refs.

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Part Eleven. Sale of Land for Nonpayment of Taxes


LXI. Redemption

B. Who May Redeem

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3004 to 3009

A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#)  3004 to 3009

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 175, 176](#)

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72 Am. Jur. 2d State and Local Taxation § 900

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

B. Who May Redeem

§ 900. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3004 to 3009

The right or privilege of redemption from a tax sale is granted to and may be exercised by the former owner of the forfeited land, the former owner's successors in interest, or any other person who has a legal or equitable interest in the land.¹

A color of authority to act for the persons entitled to redeem is sufficient to support a redemption from a tax sale.² In this respect, redemption statutes are liberally construed in favor of the right of redemption.³ The right is not personal to the owner at the time of the tax sale; while it is not an estate in land, it is a statutory privilege which passes to the heir of the owner in the same manner as the land itself.⁴ The owner may convey or devise the right of redemption.⁵

In some jurisdictions, only an owner, the holder of an unrecorded or improperly recorded interest, an occupant, or an "interested party" has the right to redeem a property tax lien acquired at a tax sale.⁶ In this regard, a person cannot qualify as an "occupant" under the tax sale statutes unless he or she holds some interest in the property, or his or her occupancy of the disputed property is otherwise proven.⁷

A valid redemption cannot be effected by the act of the public officer charged with the duty of issuing a tax deed to the holder of a tax sale certificate in advancing from his or her own money the necessary sum for redemption.⁸ The fact that such officer, before paying the redemption money out of his or her own funds, had been advised that the former owner had mailed a check for the sum due makes no difference when such check is not received until after the period for redemption expires.⁹ A person with no interest in the land has no right to redeem prior to a tax sale.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Debtor, as adverse possessor of real property on which he resided and conducted his business, was an "owner" for purposes of the Texas redemption statute and thus had right to redeem the property following tax sale; statute governing title through adverse possession contemplates "full title," not inchoate title, partial title, contingent title, or anything other than absolute title, once a competing title holder has allowed the prescribed limitations period to lapse and the adverse possessor has met any other requirements. [Tex. Civ. Prac. & Rem. Code Ann. §§ 16.021 et seq., 16.030](#); [Tex. Tax Code Ann. § 34.21](#). [In re Kelly](#), 568 B.R. 19 (Bankr. N.D. Tex. 2017).

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Footnotes

- 1 [In re Cook County Treasurer](#), 185 Ill. 2d 428, 235 Ill. Dec. 910, 706 N.E.2d 465 (1998); [Board of County Com'rs of Johnson County, Kan. v. Roberts](#), 231 Kan. 135, 643 P.2d 138 (1982); [Prince George's Homes, Inc. v. Cahn](#), 283 Md. 76, 389 A.2d 853 (1978); [Carter v. Klein](#), 243 Miss. 627, 139 So. 2d 629 (1962), error overruled, 243 Miss. 627, 140 So. 2d 95 (1962); [Mack v. Luebben](#), 215 Neb. 832, 341 N.W.2d 335 (1983) (owners through adverse possession); [Belmore v. State Tax Commission](#), 56 N.M. 436, 245 P.2d 149 (1952); [Regstad v. Steffes](#), 448 N.W.2d 203 (N.D. 1989).
- 2 [People v. Hess](#), 7 Ill. 2d 192, 130 N.E.2d 280, 54 A.L.R.2d 1165 (1955).
- 3 § 889.
- 4 [Carter v. Klein](#), 243 Miss. 627, 139 So. 2d 629 (1962), error overruled, 243 Miss. 627, 140 So. 2d 95 (1962); [Wattles v. Plotts](#), 120 N.J. 444, 577 A.2d 131 (1990) (abrogated on other grounds by, [Simon v. Cronecker](#), 189 N.J. 304, 915 A.2d 489 (2007)); [Belmore v. State Tax Commission](#), 56 N.M. 436, 245 P.2d 149 (1952); [Cain v. South Carolina Public Service Authority](#), 222 S.C. 200, 72 S.E.2d 177 (1952).
- 5 [Carter v. Klein](#), 243 Miss. 627, 139 So. 2d 629 (1962), error overruled, 243 Miss. 627, 140 So. 2d 95 (1962); [Belmore v. State Tax Commission](#), 56 N.M. 436, 245 P.2d 149 (1952); [McGuire v. Bond](#), 271 S.W.2d 508 (Tex. Civ. App. El Paso 1954), writ refused n.r.e., (Feb. 22, 1955).
- 6 [Legal Resources Agency, LLC v. Armstrong](#), 2008 MT 262, 345 Mont. 115, 191 P.3d 368 (2008).
- 7 [Legal Resources Agency, LLC v. Armstrong](#), 2008 MT 262, 345 Mont. 115, 191 P.3d 368 (2008).
- 8 [State v. McCollough](#), 85 Mont. 435, 279 P. 246, 66 A.L.R. 1033 (1929).
- 9 [State v. McCollough](#), 85 Mont. 435, 279 P. 246, 66 A.L.R. 1033 (1929).
- 10 [Winter Park Devil's Thumb Inv. Co. v. BMS Partnership](#), 926 P.2d 1253 (Colo. 1996).

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72 Am. Jur. 2d State and Local Taxation § 901

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

B. Who May Redeem

§ 901. Persons other than owner of fee

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3004](#), [3008](#), [3009](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 175](#) (Complaint, petition, or declaration—Allegation—Mortgagee entitled to redeem property sold at tax sale)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 176](#) (Complaint, petition, or declaration—Allegation—Official's refusal to accept redemption money from assignee of mortgage)

The term "owner" as used in redemption laws defining those who may redeem from a tax sale includes anyone who has a substantial interest in the premises which have been sold for taxes¹ or who is entitled to the rents, profits, and income therefrom.² Any right which in law or equity amounts to an ownership in the land, or any right of entry on it, to its possession or enjoyment, or any part of it, which can be deemed an estate in it, makes the person the owner so far as it is necessary to give him or her the right to redeem.³ A party seeking to redeem the property following a tax sale must have the requisite interest in the land or must be a creditor of the defendant at the time of redemption.⁴ Any person having an interest in land sold for nonpayment of taxes has an opportunity to redeem the property by the payment of the requisite amount to the purchaser even up to the time that the petition to foreclose is pending in court.⁵

As used in the redemption statutes, the term "owner" includes lienholders such as mortgagees, judgment creditors, and holders of contingent interests in the land affected.⁶ A taxpayers' judgment creditor is a "person interested in the land sold for taxes" within the meaning of a statute permitting redemption by any person interested in the land sold for taxes even though the creditor has no right of ownership, possession, entry, or enjoyment in the subject property.⁷ Even in the absence of a stipulation in a mortgage to that effect, a mortgagee has the right to pay taxes on the mortgaged property or to redeem from a tax sale.⁸ Some statutes expressly provide that redemption may be made by the owner or any party having an interest in or lien upon the property.⁹ The holder of a mortgage upon a portion of property which has been sold for taxes has a right to protect that portion from a tax title and to redeem the premises even though it may be necessary to redeem the entire premises.¹⁰

A person in possession of property sold for taxes, claiming adversely to the rights of the original owner or of the world in general, is an "owner" of land or a "person interested" therein and is entitled to redeem from a tax sale.¹¹ The circumstance that such person's possession does not extend for the full period necessary to give him or her good title by adverse possession is immaterial insofar as the result reached is concerned.¹²

The right of redemption from a tax sale is a property right belonging to those having an interest in the real estate and not to a mere trespasser.¹³ A person is not entitled to redeem from a tax sale merely by reason of being an occupant of the premises even though the purchaser may be required to give such person notice of expiration of the time for redemption.¹⁴

The right to redeem property does not require that a property interest be established so that it would rise to the level of ownership.¹⁵ In some jurisdictions, a person redeeming property need not have a recorded interest in the property being redeemed.¹⁶ There is no prohibition against an interested person, or any person for that matter, making payment for redemption of property sold at a tax sale to a party other than the State.¹⁷ Anyone may, for the advantage of the owner, as negotiorum gestor, make payment for the tax sale redemption money even without his or her knowledge.¹⁸ The tax redemption is valid upon the payment of taxes by anyone for any reason, and the consequence of such payment is that it inures to the benefit of the record title owner.¹⁹ Also, the purchaser of property which a vendor allegedly acquired by prescription can redeem the property following the tax sale without being a record owner where the redemption statute has no requirement of a redeemer's record title interest in the property before redeeming the property for delinquent taxes.²⁰

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Footnotes

- 1 [Darrington v. Rose](#), 128 Miss. 16, 90 So. 632 (1922).
- 2 [Darrington v. Rose](#), 128 Miss. 16, 90 So. 632 (1922).
- 3 [Darrington v. Rose](#), 128 Miss. 16, 90 So. 632 (1922); [Bundy v. Wills](#), 88 Neb. 554, 130 N.W. 273 (1911).
- 4 [DRST Holdings, Ltd. v. Brown](#), 290 Ga. 317, 720 S.E.2d 626 (2012).
- 5 [Theta Properties v. Ronci Realty Co., Inc.](#), 814 A.2d 907 (R.I. 2003) (holding that a partnership owned the right to redeem the property sold at a tax sale which was previously mistakenly conveyed to the partnership by the corporation where the partnership's ability to sue the corporation to re-convey the property to the corporation expired two years after the corporation was dissolved).
- 6 [Hallett v. Alexander](#), 50 Colo. 37, 114 P. 490 (1911); [Clermont-Minneola Country Club v. Coupland](#), 106 Fla. 111, 143 So. 133, 84 A.L.R. 1354 (1932); [Leathers v. McClain](#), 255 Ga. 378, 338 S.E.2d 666 (1986); [Koch v. Kiron State Bank of Kiron](#), 230 Iowa 206, 297 N.W. 450, 140 A.L.R. 273 (1941).
- 7 [Perret v. Loflin](#), 814 So. 2d 137 (Miss. 2002).
- 8 [Koch v. Kiron State Bank of Kiron](#), 230 Iowa 206, 297 N.W. 450, 140 A.L.R. 273 (1941).
- 9 [Jensen Livestock Co. v. Custer County](#), 113 Mont. 285, 124 P.2d 1013, 140 A.L.R. 658 (1942).

- 10 Koch v. Kiron State Bank of Kiron, 230 Iowa 206, 297 N.W. 450, 140 A.L.R. 273 (1941).
- 11 Parsons v. Prudential Real Estate Co., 86 Neb. 271, 125 N.W. 521 (1910); Turner v. Sanchez, 50 N.M. 15, 168 P.2d 96, 164 A.L.R. 1280 (1946).
- 12 Turner v. Sanchez, 50 N.M. 15, 168 P.2d 96, 164 A.L.R. 1280 (1946).
- 13 People v. Hess, 7 Ill. 2d 192, 130 N.E.2d 280, 54 A.L.R.2d 1165 (1955); Parsons v. Prudential Real Estate Co., 86 Neb. 271, 125 N.W. 521 (1910); Eames v. Armstrong, 146 N.C. 1, 59 S.E. 165 (1907).
- 14 Jensen Livestock Co. v. Custer County, 113 Mont. 285, 124 P.2d 1013, 140 A.L.R. 658 (1942).
- 15 In re County Treasurer, 396 Ill. App. 3d 541, 336 Ill. Dec. 81, 919 N.E.2d 1006 (2d Dist. 2009), appeal denied, 236 Ill. 2d 505, 341 Ill. Dec. 199, 930 N.E.2d 409 (2010).
- 16 Hebert v. Hollier, 976 So. 2d 1256 (La. 2007) (stating that when the property is redeemed, the tax sale is cleared from the title of the record owner).
- 17 Hebert v. Hollier, 976 So. 2d 1256 (La. 2007).
- 18 Hebert v. Hollier, 976 So. 2d 1256 (La. 2007).
- 19 Hebert v. Hollier, 976 So. 2d 1256 (La. 2007).
- 20 Hebert v. Hollier, 976 So. 2d 1256 (La. 2007).

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72 Am. Jur. 2d State and Local Taxation § 902

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

B. Who May Redeem

§ 902. Persons other than owner of fee—Stockholders

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3004

A.L.R. Library

[Who may redeem, from a tax foreclosure or sale, property to which title or record ownership is held by corporation, 54 A.L.R.2d 1172](#)

Shareholders may redeem to protect their interests in corporate assets whether the corporation is extant or defunct.¹ Moreover, the spouse of a deceased stockholder is a person having a legal or equitable claim in property owned by a corporation and is entitled to redeem it from a tax sale.²

A sole stockholder of corporations disqualified from transacting business for nonpayment of franchise taxes qualifies as an "other person having an interest in land," thus giving the stockholder the right of redemption of corporate properties sold for municipal liens.³

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Footnotes

- 1 Reuter v. Mobile Bldg. and Const. Trades Council, 274 Ala. 614, 150 So. 2d 699 (1963); People v. Hess, 7 Ill. 2d 192, 130 N.E.2d 280, 54 A.L.R.2d 1165 (1955); Kienbaum v. New Republic Co., 139 Wash. 298, 246 P. 925 (1926).
- 2 Boyle v. Culp, 159 Colo. 423, 412 P.2d 543 (1966).
- 3 Lasso v. Simon, 166 N.J. Super. 134, 399 A.2d 305 (App. Div. 1979).

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72 Am. Jur. 2d State and Local Taxation § 903

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Part Eleven. Sale of Land for Nonpayment of Taxes


LXI. Redemption

B. Who May Redeem

§ 903. Persons other than owner of fee—Cotenants

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3004](#), [3006](#)

When property held in cotenancy has been sold for taxes, any one of the cotenants may redeem the property and extinguish the title of the tax sale purchaser.¹ However, a cotenant has been held not equitably entitled to redeem another cotenant's interest in a parcel sold to the county at a tax foreclosure sale where there are no bidders other than the county at the sale.²

A minor or other person under disability who has an undivided interest in land has the same right to redeem as any other person having a similar estate or interest.³ In such case, the redemptioner acquires a lien on the interests of the cotenants for contribution for their shares of the amount paid, and unless they pay their proper share, they will be deemed to have abandoned their interests in the property.⁴ While under some statutes a cotenant or other part-owner may redeem his or her particular interest, in the absence of such a statute, when the land has been sold as a unit, the purchaser may require a part-owner such as a cotenant to redeem the entire tract.⁵

A service of notice of a tax deed on only one of two joint tenants of real property renders the tax deed void in its entirety, and not just partially void as to the tenant who was not served, and therefore, both joint tenants have the right to redeem the property after the issuance of the tax deed where the tax deed is for the entire property upon which delinquent taxes were owed.⁶

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Footnotes

¹ [Chavez v. Chavez](#), 56 N.M. 393, 244 P.2d 781, 30 A.L.R.2d 1236 (1952).

- 2 [In re Foreclosure of Liens](#), 130 Wash. 2d 142, 922 P.2d 73 (1996).
- 3 [Wilson v. Sykes](#), 67 Miss. 617, 7 So. 492 (1890).
- As to rights of persons under disability to redeem, see [§ 904](#).
- 4 [Am. Jur. 2d, Cotenancy and Joint Ownership § 72](#).
- 5 [State ex rel. Anderton v. Sommers](#), 242 Wis. 484, 8 N.W.2d 263, 145 A.L.R. 1324 (1943).
- 6 [Valdez v. Occupants of 3908 SW 24th Street, Oklahoma City](#), 2011 OK 99, 270 P.3d 143 (Okla. 2011).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

B. Who May Redeem

§ 904. Persons under legal disability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3004](#), [3006](#)

The fact that the owner of land sold for taxes is under legal disability does not prevent him or her from exercising a statutory right to redeem the land from a tax sale.¹ A minor, during minority, may redeem lands from a tax sale when he or she has an interest therein which would be sufficient for the purpose in the case of an adult.² Statutes which give persons under legal disability additional time after removal of the disability within which to redeem from a tax sale³ do not prevent a person under disability from redeeming at any time during disability but merely give such person additional time within which to redeem.⁴

An exception to the general rule that the redemption of property sold at a tax sale may occur anytime before the execution of a tax deed by the county treasurer allows landowners who are minors or incapacitated under a disability to redeem from a tax sale any property within one year after the expiration of such disability.⁵

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Footnotes

- ¹ [George v. Hefley](#), 182 Ark. 678, 32 S.W.2d 445 (1930).
- ² [Tucker v. Whittlesey](#), 74 Wis. 74, 41 N.W. 535 (1889).
- ³ [§ 907](#).
- ⁴ [Powell v. Smallwood](#), 48 W. Va. 298, 37 S.E. 551 (1899) (also holding that where the owner is mentally incompetent, his or her guardian may redeem on the owner's behalf).
- ⁵ [Garcia v. Ted Parks](#), L.L.C., 2008 OK 90, 195 P.3d 1269 (Okla. 2008).

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72 Am. Jur. 2d State and Local Taxation Eleven LXI C Refs.

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

C. Time Within Which to Redeem

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 [3011](#), [3023](#), [3048](#)

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A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#) 🔑 [3011](#), [3023](#), [3048](#)

Forms

[Am. Jur. Legal Forms 2d §§ 238:23, 238:24](#)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 169, 170, 177](#)

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

C. Time Within Which to Redeem

§ 905. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3011](#), [3023](#), [3048](#)

Forms

[Am. Jur. Legal Forms 2d § 238:23](#) (Notice—By county official—Of expiration of time for redemption)

[Am. Jur. Legal Forms 2d § 238:24](#) (Notice—By purchaser at tax sale—Of expiration of time for redemption)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 169](#) (Notice—Expiration of time for redemption—General form)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 170](#) (Notice—Commencement of action to foreclose right of redemption)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 177](#) (Complaint, petition, or declaration—Allegation—Failure to redeem property within statutory period)

The time within which one may redeem from a tax sale may be indefinitely extended by the failure of the purchaser at the tax sale to give a required statutory notice of the expiration of the redemption period.¹ However, when no such notice is required, or when duly given pursuant to the statutory requirement, the right of redemption must be exercised within the time fixed by the statute giving the right² unless the redemptioner can bring himself or herself within some saving clause which extends that time, such as is usually given to persons under a disability,³ or unless there has been some such dereliction of duty by the officers of the state as will excuse the redemptioner's failure to redeem within the statutory period.⁴

Observation:

The effect of the expiration of the redemption period and bar of the right of redemption is to vest the purchaser of real property at a tax lien sale with an absolute and unconditional title to the land provided that such title was owned by the original owner, and the tax sale was valid.⁵ Also, after the expiration of the statutory period to redeem property following a tax sale, the right to redeem may be barred by a notice of foreclosure of the right to redeem or the ripening of the title pursuant to statute allowing the title under a tax deed to ripen by prescription.⁶

In some jurisdictions, the right to redeem property sold at a tax sale exists up to the time that a petition to foreclose redemption rights is pending in court.⁷ In other jurisdictions, the right of redemption is lost upon the fixing of a date for a tax sale before the issuance of a tax deed.⁸

The courts can make no extension of the statutory time nor any exceptions from the general provisions of the statute to meet circumstances of hard cases; thus, the imprisonment of the owner does not extend the time for redemption.⁹ Any tender after the time allowed by law for redemption under a tax sale is without effect.¹⁰

Persons in military service are protected against loss of their property for nonpayment of taxes due to military hardship by provisions of the Soldiers' and Sailors' Civil Relief Act extending the period allowed for redemption of property which has been sold or forfeited for nonpayment of taxes.¹¹

A statute may make the presumption of validity of a conveyance of property unredeemed prior to a tax sale conclusive after the expiration of a certain number of years from the date of the recording of a tax deed.¹²

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Footnotes

- 1 §§ 911 to 921.
- 2 *Shewfelt v. U.S.*, 406 U.S. 944, 92 S. Ct. 2042, 32 L. Ed. 2d 331 (1972) (applying California law); *Machen v. Wolande Management Group, Inc.*, 271 Ga. 163, 517 S.E.2d 58 (1999); *Butler v. Smith*, 84 Neb. 78, 120 N.W. 1106 (1909); *Fernandez Co. v. Montoya*, 42 N.M. 524, 82 P.2d 289, 118 A.L.R. 573 (1938); *Eugene Osterhout, Inc. v. Sardo*, 66 A.D.2d 167, 413 N.Y.S.2d 479 (3d Dep't 1979) (statutory period of redemption held to have expired).
- 3 § 907.
- 4 § 931.
- 5 *National Tax Funding, L.P. v. Harpagon Company, LLC.*, 277 Ga. 41, 586 S.E.2d 235 (2003).
- 6 *BX Corp. v. Hickory Hill 1185, LLC*, 285 Ga. 5, 673 S.E.2d 205 (2009).
- 7 *ABAR Associates v. Luna*, 870 A.2d 990 (R.I. 2005).
- 8 *Collier v. Kincheloe*, 2008 MT 100, 342 Mont. 314, 180 P.3d 1157 (2008).
- 9 *Grasser v. Jones*, 102 Or. 214, 201 P. 1069, 18 A.L.R. 529 (1921).

- 10 *Machen v. Wolande Management Group, Inc.*, 271 Ga. 163, 517 S.E.2d 58 (1999).
11 *Am. Jur. 2d, Military, and Civil Defense* § 359.
12 *Mareterra Corp. v. Sgroi*, 156 A.D.2d 344, 548 N.Y.S.2d 297 (2d Dep't 1989).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

C. Time Within Which to Redeem

§ 906. Redemption period beginning or ending with execution of deed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3011

Every opportunity is to be afforded to persons entitled to redeem real estate from a lien resulting from a tax sale prior to the execution of a tax deed; thus, until a tax deed, valid on its face, has been issued and delivered, the landowner has the right to redeem from the tax sale or resale.¹

Under a statute providing for a period of redemption from a tax sale which begins or ends with the execution of a tax or resale deed, a delivery is an essential part of the execution of a tax or resale deed, and the statutory right to redeem prior to the execution of such instrument is not terminated by other steps in execution not including a delivery to the grantee or to some person acting in his or her behalf.² "Issuing" and "execution" are interchangeable in statutes prohibiting the issuing of a tax deed until the clerk of the circuit court gives 30 days' notice of the application for a tax deed and providing that at any time before the execution of a tax deed, the owner or claimant of the land may redeem it.³

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Footnotes

- ¹ [Garcia v. Ted Parks, L.L.C., 2008 OK 90, 195 P.3d 1269 \(Okla. 2008\).](#)
- ² [Gilliland v. Shuman, 1946 OK 192, 197 Okla. 365, 170 P.2d 549, 166 A.L.R. 850 \(1946\).](#)
- ³ [Lance v. Smith, 123 Fla. 461, 167 So. 366 \(1936\).](#)

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

C. Time Within Which to Redeem

§ 907. When owner is under legal disability; extension of time

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3011](#), [3023](#), [3048](#)

Although many tax redemption statutes contain saving clauses in favor of persons under legal disabilities, such as minority or incompetency, which give such persons, whose lands have been sold for delinquent taxes during the existence of such disability, a certain length of time after removal of the disability within which to redeem from the tax sale,¹ in the absence of any such express saving clause, persons under disability are subject to the same limitation of time, with respect to redemption, as that which applies to persons sui juris.² The principle which governs the application of a general statute of limitations containing no exception in favor of persons under legal disability³ applies, although some courts regard the limitation upon the time for bringing suit for redemption as in the nature of a statute of limitations which does not run against minors and others under disability, because of general saving clauses in the limitation statutes.⁴

Many tax redemption statutes give persons under disability a certain additional time after the removal of the disability within which to redeem from a tax sale.⁵ Statutes may give minors the right to redeem from a tax sale within a certain time after reaching majority.⁶ Such statutes are liberally construed to preserve the rights of the minor and prevent a permanent forfeiture of the estate.⁷

The right of a person under disability to redeem land from a tax sale within a certain period from the expiration or removal of the disability cannot be defeated by the sale of the property by the purchaser at the tax sale, since the vendees of such a purchaser would acquire no better title than what the purchaser has, even though they paid value and had no notice that a minor was the owner of the land at the time of forfeiture.⁸

CUMULATIVE SUPPLEMENT

Cases:

Personal representative of taxpayer's estate failed to prove that 95-year-old taxpayer suffered from a mental disorder at time her real property was sold at tax sale, and therefore, estate was not entitled to extended redemption period, despite fact that taxpayer had been residing at retirement community; both parties' experts described taxpayer's mental condition as a slow decline, taxpayer's physician stated that she remained vigilant regarding her financial obligations, and a newspaper article published a few months after the sale stated that she was functioning near her normal capacity—engaging in weekly card games with friends and reading. [Neb. Rev. Stat. § 77-1827](#). [Wisner v. Vandelay Investments, L.L.C.](#), 300 Neb. 825, 916 N.W.2d 698 (2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Mitchell v. Chester](#), 208 Ark. 781, 187 S.W.2d 899, 159 A.L.R. 1462 (1945); [Darrington v. Rose](#), 128 Miss. 16, 90 So. 632 (1922).
- 2 [McGee v. Carter](#), 31 Tenn. App. 141, 212 S.W.2d 902 (1948).
- 3 [Am. Jur. 2d, Limitation of Actions § 195](#).
- 4 [Glymph v. Smith](#), 180 S.C. 382, 185 S.E. 911, 105 A.L.R. 631 (1936).
- 5 [Hall v. Potter](#), 81 Ark. 476, 99 S.W. 687 (1907); [Humes v. Krauss](#), 221 Miss. 301, 72 So. 2d 737 (1954).
- 6 [Mitchell v. Chester](#), 208 Ark. 781, 187 S.W.2d 899, 159 A.L.R. 1462 (1945); [State v. Krahmer](#), 105 Minn. 422, 117 N.W. 780 (1908); [Smith v. Hughes](#), 1929 OK 118, 135 Okla. 296, 275 P. 628, 65 A.L.R. 573 (1929).
- 7 [Seattle Land & Imp. Co. v. Blum](#), 71 Wash. 530, 128 P. 1066 (1913).
- 8 [Bradbury v. Johnson](#), 104 Ark. 108, 147 S.W. 865 (1912).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

C. Time Within Which to Redeem

§ 908. When owner is under legal disability; extension of time— Right as determinable by ownership as of time of sale or of redemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3011](#), [3023](#), [3048](#)

In order to be entitled to the benefit of a statute extending the time within which one under a legal disability has to redeem from a tax sale, one must have been under disability at the time that the land was sold in satisfaction of the tax lien.¹ However, there is authority construing such a statute more liberally and holding that the acquisition of title to land by a person under disability after the land is sold for taxes but, before the period of redemption has expired, gives such person the benefit of the additional period allowed for redemption.² Under this latter rule, a conveyance to a person under disability must be made in good faith; a conveyance without consideration, made for the purpose of extending the period of redemption, is ineffective as against the purchaser of the tax title.³

Within the rule which holds that a person under disability must have been the owner of the land at the time of the sale in order to have the benefit of an extension of time for redemption granted to persons under disability, ownership of a contingent or vested remainder is sufficient.⁴

The statutory right of a minor to redeem from a tax sale land which came to the minor upon the death of a parent is a statutory privilege running with the land, rather than an estate in the land that passed to the minor through the death of the parent, so that in an action to redeem, the minor will be bound by no estoppel or laches on account of any acts of the parent.⁵

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Footnotes

- 1 Culp v. Culp, 51 Kan. 341, 32 P. 1118 (1893).
- 2 Corry v. Shea, 144 Wis. 135, 128 N.W. 892 (1910).
- 3 Corry v. Shea, 144 Wis. 135, 128 N.W. 892 (1910).
- 4 Minnesota Debenture Co. v. Dean, 85 Minn. 473, 89 N.W. 848 (1902).
- 5 Bradbury v. Johnson, 104 Ark. 108, 147 S.W. 865 (1912).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

C. Time Within Which to Redeem

§ 909. When owner is under legal disability; extension of time—When property is held in cotenancy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3011](#), [3023](#), [3048](#)

When a provision, giving additional time to minors and others under disability to redeem from a tax sale after removal of the disability, is invoked by one who has an undivided interest in land as a cotenant, or other estate or interest less than an absolute fee, such person's right to redeem is limited to his or her own interest in the premises and does not extend to other owners and other tenants in common.¹ Some courts have expressed the view that upon the removal of the disability, such person may redeem the whole of the property notwithstanding the bar of the right of the owners of the other interest to redeem.²

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¹ [Smith v. Hughes](#), 1929 OK 118, 135 Okla. 296, 275 P. 628, 65 A.L.R. 573 (1929).

² [Mitchell v. Chester](#), 208 Ark. 781, 187 S.W.2d 899, 159 A.L.R. 1462 (1945).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

C. Time Within Which to Redeem

§ 910. Computation of time

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3011](#), [3023](#), [3048](#)

The courts have held that the time for redemption begins to run from—

— the time of the sale, meaning the time when the property is struck off to the bidder, and not from the time of the confirmation of the sale.¹

— the date of confirmation of the sale.²

— the time of the payment of the purchase money.³

— the time of the recording or the filing of the deed.⁴

Under some statutes, the right of redemption cannot be cut off until the purchaser has served upon the former owner a statutory notice of expiration of the period of redemption.⁵

Observation:

The State has no interest in expeditiously cutting off the redemption rights of a property owner in favor of a tax sale purchaser.⁶

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Footnotes

- 1 [Daugherty v. Rester](#), 645 So. 2d 1361 (Ala. 1994) (holding that the date of sale is the date the certificate of purchase is issued); [Brasch v. Mumey](#), 99 Ark. 324, 138 S.W. 458 (1911); [Parsons v. Prudential Real Estate Co.](#), 86 Neb. 271, 125 N.W. 521 (1910).
- 2 [Bundy v. Wills](#), 88 Neb. 554, 130 N.W. 273 (1911); [Marlowe v. Kingdom Hall of Jehovah's Witnesses](#), 541 S.W.2d 121 (Tenn. 1976).
- 3 [Wood v. Henry](#), 107 Ga. 389, 33 S.E. 410 (1899).
- 4 [MacLeod v. Hoover](#), 159 La. 244, 105 So. 305 (1925).
- 5 §§ 911 to 921.
- 6 [Schlereth v. Hardy](#), 280 S.W.3d 47 (Mo. 2009).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

[Topic Summary](#) | [Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3007](#), [3011](#), [3013](#) to [3020](#), [3030](#), [3072\(1\)](#)

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[Am. Jur. Legal Forms 2d §§ 238:23 to 238:25](#)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 159](#)

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

§ 911. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3007](#), [3011](#), [3013](#) to [3020](#), [3030](#), [3072\(1\)](#)

Forms

[Am. Jur. Legal Forms 2d § 238:23](#) (Notice—By county official—Of expiration of time for redemption)

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[Am. Jur. Legal Forms 2d § 238:25](#) (Certificate of redemption)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 159](#) (Complaint, petition, or declaration—Allegation—Insufficiency of notice to redeem)

In the absence of a statute requiring a tax sale purchaser to give notice of the expiration of the period of redemption to the owner or occupant of the land, no notice of this kind needs to be given,¹ and the tax title will become absolute at the expiration of the statutory period of redemption.² However, statutes may require as a condition precedent to foreclosing the taxpayer's right to redeem premises sold for nonpayment of taxes the giving of a notice, either by the purchaser or by a public officer, of the time at or the period within which the land may be redeemed,³ and the failure of the tax purchaser to serve notice on those statutorily entitled to notice renders the purchaser's title void.⁴ There is also authority holding that the tax sales and deeds are rendered void by the failure of the court clerk and the sheriff to provide landowners with notice of the expiration of the redemption period.⁵ Under the statutes in other jurisdictions, an owner must be served with a notice to redeem property following a tax sale six

months before expiration of the two-year redemption period, while an occupant must be served with a notice to redeem six months before expiration of the three-year redemption period, and the required six-month notice does not shorten the applicable redemption period.⁶

The notice requirement is generally regarded as jurisdictional, and therefore, the owner's right of redemption cannot be cut off unless the required notice is given.⁷ Indeed, a statutory requirement that the purchaser of land at a tax sale must provide notice of the expiration of the redemption period to the person in possession of the property has been held absolute, and thus, a tenant, who later purchased the property from the tax sale purchaser, cannot waive its right to a notice or claim that it had actual notice in order to prevent the tax deed from being void.⁸ Moreover, if a valid notice of the expiration of the period of redemption has been issued and served in accordance with the statutes, and no redemption is made within the time prescribed by the statute and the notice, the right of redemption terminates, and title passes to the owner of the tax sale certificate.⁹

Failure to give the statutory notice is not cured by the expiration of a statutory limitation period fixed by a statute providing that no action for the recovery of real estate sold for the nonpayment of taxes may be brought after a certain number of years from the execution and recording of the treasurer's deed.¹⁰ The acquisition of knowledge by the taxpayer of the expiration day of redemption in any manner other than by notice given according to statutory requirements is not equivalent to or effective as a notice.¹¹ On the other hand, the right and title of the purchaser ripens into a title in fee upon the expiration of the time for redemption and the failure of the landowner to redeem after the giving of the statutory notice of the expiration of the redemption period.¹²

A notice of tax redemption, when required, should be definite, specific, and free from doubt and uncertainty in all material matters.¹³ A notice of expiration of time for redemption from a tax sale is not vitiated because, in addition to the information required by statute, it gives additional information beneficial to the recipient.¹⁴

The courts cannot dispense with the requirements of the statute upon the ground that they are unnecessary¹⁵ or substitute for the statutory notice their own idea as to what notice should be the equivalent of or substitute for the notice required by the legislature.¹⁶

Observation:

The previous defects in the notice procedure of a tax sale have been held harmless where a mortgagee had adequate opportunity to redeem its property after the tax sale and yet failed to answer or appear upon notice of the petition to foreclose its rights of redemption.¹⁷

Footnotes

¹ Cota v. McDermott, 73 N.D. 459, 16 N.W.2d 54, 155 A.L.R. 1271 (1944).

- 2 State v. Krahmer, 105 Minn. 422, 117 N.W. 780 (1908).
3 U.S. v. Varani, 780 F.2d 1296 (6th Cir. 1986).
4 U.S. v. Varani, 780 F.2d 1296 (6th Cir. 1986).
5 Alexander v. Womack, 857 So. 2d 59 (Miss. 2003).
6 Carney v. Philippone, 1 N.Y.3d 333, 774 N.Y.S.2d 106, 806 N.E.2d 131 (2004).
7 Rusch v. John Duncan Land & Mining Co., 211 U.S. 526, 29 S. Ct. 172, 53 L. Ed. 312 (1909); Long v.
 Dillon, 208 Mont. 490, 679 P.2d 772 (1984); Van Raden Homes, Inc. v. Dakota View Estates, 546 N.W.2d
 843 (N.D. 1996); State v. Bramlette, 43 Wyo. 470, 5 P.2d 279, 82 A.L.R. 497 (1931).
8 Dohrn v. Mooring Tax Asset Group, L.L.C., 743 N.W.2d 857 (Iowa 2008) (stating that the tenant only had
 "actual notice" of the tax sale after the redemption period had expired).
9 Higgins v. Trauger, 2001 ND 149, 632 N.W.2d 463 (N.D. 2001).
10 Smith v. Huber, 224 Iowa 817, 277 N.W. 557, 115 A.L.R. 131 (1938).
11 Jensen Livestock Co. v. Custer County, 113 Mont. 285, 124 P.2d 1013, 140 A.L.R. 658 (1942).
12 State v. Krahmer, 105 Minn. 422, 117 N.W. 780 (1908).
13 Telford v. Pennsylvania Iron & Steel Co., 130 Minn. 397, 153 N.W. 758 (1915).
14 Kelsch v. Miller, 73 N.D. 405, 15 N.W.2d 433, 155 A.L.R. 1186 (1944).
15 Lyman v. Walker, 192 Iowa 982, 185 N.W. 607 (1921).
16 Jensen Livestock Co. v. Custer County, 113 Mont. 285, 124 P.2d 1013, 140 A.L.R. 658 (1942).
17 Kildeer Realty v. Brewster Realty Corp., 826 A.2d 961 (R.I. 2003).

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72 Am. Jur. 2d State and Local Taxation § 912

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

§ 912. Construction of statutory requirement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3007](#), [3011](#), [3013](#) to [3020](#), [3030](#), [3072\(1\)](#)

A.L.R. Library

[Validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988](#)

[Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967](#)

Generally, statutes requiring notice of the expiration of the period for redemption from a tax sale are construed liberally in favor of the taxpayer and strictly against the purchaser.¹ Indeed, statutes requiring notice of the expiration of the period of redemption must be strictly complied with to terminate the owner's right to redeem property from a tax sale.² The courts generally require not a substantial but a strict compliance with such requirement, and hold the tax sale void unless there is such strict compliance, without regard to whether the taxpayer was or could have been misled by the notice as given.³ The notice should give the precise information required by the statute;⁴ it cannot be left to inference from doubtful or equivocal language.⁵

Some courts support the view that an omission or irregularity which is one of substance vitiates the notice, but if it is not one of substance and the notice, notwithstanding the error or irregularity, substantially complies with the requirements of the statute so that all parties entitled to the notice are actually afforded the notice the law requires, it serves its intended purpose and is

effectual.⁶ Other courts take a contrary view to the effect that⁷ the notice should state with certainty the amount which is required to be paid in order to redeem the land,⁸ state with certainty the year for which the taxes are due,⁹ state with certainty the time at which the period for redemption expires,¹⁰ accurately describe the land,¹¹ and inform the owner whether the property was sold for a general tax or for a special assessment.¹²

If the statute requires that the notice be under seal, the absence of a seal is fatal to its validity.¹³

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Footnotes

- 1 [Pendergast v. Davenport](#), 375 N.W.2d 684 (Iowa 1985); [Glantz v. Scaduto](#), 96 Misc. 2d 1004, 410 N.Y.S.2d 215 (Sup 1978); [Heier v. Olson](#), 75 N.D. 541, 30 N.W.2d 613 (1947); [State v. Bramblette](#), 43 Wyo. 470, 5 P.2d 279, 82 A.L.R. 497 (1931).
- 2 [Higgins v. Trauger](#), 2001 ND 149, 632 N.W.2d 463 (N.D. 2001).
- 3 [Sanders v. Ryles](#), 318 Ark. 418, 885 S.W.2d 888 (1994); [Blizzard v. Moniz](#), 271 Ga. 50, 518 S.E.2d 407 (1999) (holding that a failure to comply with notice requirements fails to foreclose the right of redemption); [Gaither v. Lager](#), 2 Ill. 2d 293, 118 N.E.2d 4, 43 A.L.R.2d 980 (1954); [Griffeth v. Cass County](#), 244 N.W.2d 301 (N.D. 1976); [In re Ryan Inv. Co., Inc.](#), 335 S.C. 392, 517 S.E.2d 692 (1999).
- 4 [Stewart v. Ridenour](#), 97 Neb. 451, 150 N.W. 206 (1914).
- 5 [Wilson v. Glos](#), 266 Ill. 392, 107 N.E. 630 (1914).
- 6 [Peterson v. Wallace](#), 140 Iowa 22, 118 N.W. 37 (1908); [Baird v. Zahl](#), 58 N.D. 388, 226 N.W. 549 (1929).
- 7 [Lanning v. Musser](#), 88 Neb. 418, 129 N.W. 1022 (1911); [State v. Bramblette](#), 43 Wyo. 470, 5 P.2d 279, 82 A.L.R. 497 (1931).
- 8 § 914.
- 9 [Gaither v. Lager](#), 2 Ill. 2d 293, 118 N.E.2d 4, 43 A.L.R.2d 980 (1954).
- 10 § 915.
- 11 [State Finance Co. v. Mulberger](#), 16 N.D. 214, 112 N.W. 986 (1907).
- 12 [Gaither v. Lager](#), 2 Ill. 2d 293, 118 N.E.2d 4, 43 A.L.R.2d 980 (1954).
- 13 [Downing v. Lucy](#), 121 Minn. 301, 141 N.W. 183 (1913).

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72 Am. Jur. 2d State and Local Taxation § 913

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Part Eleven. Sale of Land for Nonpayment of Taxes


LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

§ 913. Notice including more than one parcel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3013](#) to [3020](#)

A notice of the expiration of the period of redemption from a tax sale is insufficient if it includes more than one parcel or description of land without separately indicating the amount paid or required for the redemption of each parcel¹ or if such notice refers to or describes a number of tracts of land where such tracts are owned by various individuals named in the notice.² Even though there is but a single owner of a single tract, or where there is but a single purchaser of all the parcels involved in the tax sale, the notice must separately indicate the amount paid or required for the redemption of each parcel.³

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Footnotes

- ¹ [John Duncan Land & Min. Co. v. Rusch](#), 145 Mich. 1, 108 N.W. 494 (1906), *aff'd*, 211 U.S. 526, 29 S. Ct. 172, 53 L. Ed. 312 (1909); [Trustee Loan Co. v. Botz](#), 37 N.D. 230, 164 N.W. 14 (1917).
- ² [Ambler v. Patterson](#), 80 Neb. 570, 114 N.W. 781 (1908); [Stubbs v. Hoerr](#), 20 N.D. 26, 125 N.W. 1062 (1910).
- ³ [Davidson v. Kepner](#), 37 N.D. 198, 163 N.W. 831 (1917).

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72 Am. Jur. 2d State and Local Taxation § 914

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

§ 914. Statement of amount necessary to redeem

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3013](#), [3017](#), [3030](#)

Generally, the notice to redeem must state the amount necessary to redeem the land with accuracy and in such a way as to leave the matter free from all doubt and uncertainty.¹ The statement of an amount greater than that actually is required renders the notice void even if the excess is but a trifle.² A tax deed is void where the notice of expiration of the period of redemption states the amount of taxes due in one lump sum and includes therein taxes which were delinquent for less than a specified number of years prior to service of the notice.³ However, the fact that such notice includes in the statement of the amount due a sum which has been paid to the state as a condition of purchase for a tax which was illegally assessed does not invalidate the notice.⁴

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Footnotes

- ¹ [Telford v. Pennsylvania Iron & Steel Co.](#), 130 Minn. 397, 153 N.W. 758 (1915); [Heier v. Olson](#), 75 N.D. 541, 30 N.W.2d 613 (1947).
- ² [Shine v. Olson](#), 110 Minn. 44, 124 N.W. 452 (1910).
- ³ [Bartell v. Morken](#), 65 N.W.2d 270, 46 A.L.R.2d 1353 (N.D. 1954).
- ⁴ [Petition of Auditor General](#), 204 Mich. 442, 170 N.W. 549, 2 A.L.R. 1526 (1918).

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72 Am. Jur. 2d State and Local Taxation § 915

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

§ 915. Statement of time for redemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3011](#), [3013](#), [3017](#)

A failure to provide proper notice of the expiration of the redemption period by both mail and publication is a jurisdictional defect that voids the tax title.¹

Some courts support the view that if the notice states the last day upon which the land may be redeemed to be later than that provided by law, the notice will not be void unless the owner shows that he or she offered to redeem within the time set out therein and was refused the right to do so; under this view, substantial compliance with the statute is sufficient.² In other jurisdictions, while a notice incorrectly stating a shorter time than the law allows for redemption of property from a tax sale is fatally defective, a statement in the notice that the time for redemption will expire 90 days from service of the notice fully complies with the statutory requirements.³ There is also authority holding that defects in following the notice provisions of the tax sale redemption statute may give an injured party a claim for damages but will not render the tax sale or the deed therefrom void.⁴

Indefiniteness in the statement of the date, or ambiguity as to the expiration date, or the statement of the expiration date in the alternative will ordinarily render the notice ineffective.⁵ A statement in the notice of redemption that the redemption period will expire in a stated number of days or months after the service of the notice, after completion of service, after service and proof, and the like is not sufficiently definite in the statement of time to make the notice valid.⁶

CUMULATIVE SUPPLEMENT

Cases:

A misstatement in the statutory notice of the expiration of the time of redemption renders the tax deed invalid. [Neb. Rev. Stat. §§ 77-1831, 77-1843](#). [Adair Holdings, LLC v. Johnson](#), 304 Neb. 720, 936 N.W.2d 517 (2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Gaither v. Lager](#), 2 Ill. 2d 293, 118 N.E.2d 4, 43 A.L.R.2d 980 (1954); [Lyman v. Walker](#), 192 Iowa 982, 185 N.W. 607 (1921); [Marks v. Seaman](#), 16 A.D.2d 829, 228 N.Y.S.2d 927 (2d Dep't 1962); [Van Raden Homes, Inc. v. Dakota View Estates](#), 546 N.W.2d 843 (N.D. 1996); [State v. Bramblette](#), 43 Wyo. 470, 5 P.2d 279, 82 A.L.R. 497 (1931) (holding the statement of time for redemption inadequate).
- 2 [Closser v. Remley](#), 195 Mich. 313, 162 N.W. 120 (1917); [Halsted v. Silberstein](#), 196 N.Y. 1, 89 N.E. 443 (1909).
- 3 [Higgins v. Trauger](#), 2001 ND 149, 632 N.W.2d 463 (N.D. 2001).
- 4 [Saffo v. Foxworthy, Inc.](#), 286 Ga. 284, 687 S.E.2d 463 (2009), cert. denied, 130 S. Ct. 3360, 176 L. Ed. 2d 1246 (2010).
- 5 [Parker v. Branch](#), 42 Minn. 155, 43 N.W. 907 (1889).
- 6 [Mather v. Curley](#), 75 Minn. 248, 77 N.W. 957 (1899).

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72 Am. Jur. 2d State and Local Taxation § 916

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

§ 916. Who is entitled to notice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3013](#), [3016](#)

A.L.R. Library

[Who may redeem, from a tax foreclosure or sale, property to which title or record ownership is held by corporation, 54 A.L.R.2d 1172](#)

The statutes may require that the notice to redeem from a tax sale be given to—

- occupants or persons in possession of the land.¹
- those to whom the land is assessed.²
- the owner of the land.³
- any person entitled to pay taxes on the property.⁴
- persons retaining a recorded interest in the property at the time that the notice is sent.⁵

— the grantee under the last recorded deed.⁶

Each owner must receive a separate notice to redeem,⁷ and where the property is owned by cotenants and is assessed as an entirety, notice must be served upon all of the co-owners even though the statute may use only the word "owner" in the singular.⁸ A notice of the expiration of the period of redemption after a tax sale is void where it is directed to one of the owners "et al." without naming the other owner, and consequently, the tax deed to the county and its deed to the tax sale purchaser are likewise void.⁹ A husband and wife who purchase property are entitled to separate notices of the redemption period.¹⁰ However, a county treasurer has been held not required to send separate notices to property owners, who lived at the same address, regarding an upcoming end of the redemption period following the tax sale for unpaid taxes, where the owners were spouses with the same address, the address was certainly the best address available, and the address to which the notice was sent was the only address ever given to the county officials.¹¹

While a requirement of service upon the owner means the actual owner, and it is not sufficient to serve the notice upon one attempting to hold the land under a void deed,¹² service of the notice upon the record titleholder who is in possession has been held to meet the requirement of a notice served personally on the owner notwithstanding that there was an outstanding unrecorded sheriff's deed upon the land upon foreclosure of a mortgage by advertisement which divested such person of his or her actual title to the land.¹³

Where property owned by a general partnership is sold for delinquent taxes, it is necessary only to serve notice of the right to redeem upon the partnership.¹⁴ Partners in a general partnership are not co-owners of partnership property and have no interest in partnership property that entitles them to a separate notice of the right to redeem partnership property that has been sold for delinquent taxes.¹⁵

A mortgagee's attorney in a pending foreclosure action concerning a property subject to tax lien has been held not a "legal representative" within the meaning of a county administrative code provision requiring a tax lien purchaser to provide notice to legal representatives of interested parties that a tax deed would be issued unless the right to redeem is exercised.¹⁶ Moreover, a court-assigned referee in a mortgage foreclosure proceeding is not a party of interest entitled to notice from the tax lien purchaser that a tax deed would be issued unless the right to redeem is exercised.¹⁷

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Footnotes

- 1 § 917.
- 2 § 918.
- 3 In re Cook County Treasurer, 185 Ill. 2d 428, 235 Ill. Dec. 910, 706 N.E.2d 465 (1998); *Larson v. Clough*, 55 N.D. 634, 214 N.W. 904, 54 A.L.R. 752 (1927); *Rollyson v. Jordan*, 205 W. Va. 368, 518 S.E.2d 372 (1999).
As to persons entitled to notice of proceedings for the sale of land for taxes, generally, see § 825.
As to the necessary parties in a judicial proceeding to enforce or foreclose a general tax lien, generally, see § 792.
- 4 *Rollyson v. Jordan*, 205 W. Va. 368, 518 S.E.2d 372 (1999).
- 5 *Van Raden Homes, Inc. v. Dakota View Estates*, 546 N.W.2d 843 (N.D. 1996).
- 6 *Lovine v. Goodridge-Call Lumber Co.*, 130 Minn. 202, 153 N.W. 517 (1915).
- 7 *Dow v. State*, 396 Mich. 192, 240 N.W.2d 450 (1976).
- 8 *Fariss v. Anaconda Copper Mining Co.*, 31 F. Supp. 571 (D. Mont. 1940).
- 9 *Anderson v. Shelton*, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).
- 10 *Dow v. State*, 396 Mich. 192, 240 N.W.2d 450 (1976).
- 11 *Johnson v. Arbabi*, 355 S.C. 64, 584 S.E.2d 113 (2003).

- 12 [Griffin v. Jackson](#), 145 Mich. 23, 108 N.W. 438 (1906); [State Finance Co. v. Mulberger](#), 16 N.D. 214, 112 N.W. 986 (1907).
- 13 [Larson v. Clough](#), 55 N.D. 634, 214 N.W. 904, 54 A.L.R. 752 (1927).
- 14 [Cogar v. Lafferty](#), 219 W. Va. 743, 639 S.E.2d 835 (2006).
- 15 [Cogar v. Lafferty](#), 219 W. Va. 743, 639 S.E.2d 835 (2006).
- 16 [Kese Industries v. Roslyn Torah Foundation](#), 15 N.Y.3d 485, 914 N.Y.S.2d 704, 940 N.E.2d 530 (2010) (stating that the legislative purpose of service upon a "legal representative" in the county administrative code provision requiring a tax lien purchaser to provide notice that a tax deed will be issued unless the right to redeem is exercised is to ensure that personal representatives, namely executors or administrators of an estate, are notified of a risk of divestiture of title to their property).
- 17 [Kese Industries v. Roslyn Torah Foundation](#), 15 N.Y.3d 485, 914 N.Y.S.2d 704, 940 N.E.2d 530 (2010).

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72 Am. Jur. 2d State and Local Taxation § 917

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

§ 917. Occupant or person in possession

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3013](#), [3016](#)

The statutes may require a notice of redemption from a tax sale to be given to the person occupying or having possession of the land on which the delinquent taxes are assessed.¹

Observation:

The onus is on the tax sale certificate holder to identify who is in possession of the property in order to serve them with notice of their redemption rights.²

Under some statutes, such notice may be served upon either the owner or the occupant,³ but under others, it must be served upon both.⁴ Where a statute requires notice to be given to or served on the occupant, as well as the owner or taxpayer, notice must be given to the occupant even though the owner or taxpayer has received due notice.⁵ A notice to redeem sent to the owner of the

property and not to the owner's spouse and children also residing on the property is sufficient to comply with the requirement that notice be given to the occupant of the premises.⁶

One who has been in actual possession as distinguished from legal possession is an occupant entitled to a notice of redemption⁷ or a notice of application for a tax deed.⁸ A trespasser, claiming no title or interest in the property and having no obligation to pay the taxes thereon, is not an actual occupant upon whom a personal service of notice must be had.⁹ However, an actual occupant of real estate, whether claiming an interest in privity with the owner or a title or a right of possession adversely to the owner, is entitled to receive the notice.¹⁰

Under statutes requiring notice to one in occupancy or possession, a tenant in actual possession of all or a portion of the premises is entitled to notice.¹¹ Persons residing or living on the premises other than as tenants and exercising control over the premises, or claiming ownership thereof, are entitled to notice.¹² The actual use of land for outdoor advertising purposes constitutes occupancy.¹³ Persons who merely cultivate or use the land, either with or without the permission of the owner, without residing thereon, are not so entitled¹⁴ although a person who does more than cultivate the land may be entitled to notice.¹⁵

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Footnotes

- 1 U.S. v. Varani, 780 F.2d 1296 (6th Cir. 1986) (applying Michigan law); Kenealy v. Glos, 241 Ill. 15, 89 N.E. 289 (1909); Pendergast v. Davenport, 375 N.W.2d 684 (Iowa 1985); Pomroy v. Beattie, 139 Minn. 127, 165 N.W. 960 (1918); Parsons v. Prudential Real Estate Co., 86 Neb. 271, 125 N.W. 521 (1910).
- 2 Dohrn v. Mooring Tax Asset Group, L.L.C., 743 N.W.2d 857 (Iowa 2008).
- 3 Stoelker v. Cappon, 247 Wis. 453, 19 N.W.2d 896 (1945).
- 4 Jensen Livestock Co. v. Custer County, 113 Mont. 285, 124 P.2d 1013, 140 A.L.R. 658 (1942).
- 5 Brown v. Davis, 103 Colo. 110, 83 P.2d 326 (1938); Jensen Livestock Co. v. Custer County, 113 Mont. 285, 124 P.2d 1013, 140 A.L.R. 658 (1942); Bodinger v. Garrison, 250 A.D. 463, 294 N.Y.S. 916 (2d Dep't 1937).
- 6 Glantz v. Scaduto, 96 Misc. 2d 1004, 410 N.Y.S.2d 215 (Sup 1978).
- 7 Witherhead v. Ort, 223 A.D. 626, 229 N.Y.S. 315 (3d Dep't 1928), *aff'd*, 249 N.Y. 567, 164 N.E. 586 (1928).
- 8 Van Voast v. Blaine County, 118 Mont. 375, 167 P.2d 563 (1946).
- 9 Parsons v. Prudential Real Estate Co., 86 Neb. 271, 125 N.W. 521 (1910).
- 10 Parsons v. Prudential Real Estate Co., 86 Neb. 271, 125 N.W. 521 (1910).
- 11 Brown v. Davis, 103 Colo. 110, 83 P.2d 326 (1938).
- 12 Kenealy v. Glos, 241 Ill. 15, 89 N.E. 289 (1909); Grimes v. Ellyson, 130 Iowa 286, 105 N.W. 418 (1905).
- 13 West End Brewing Co. v. Osborne, 227 A.D. 340, 238 N.Y.S. 345 (3d Dep't 1929), *aff'd*, 254 N.Y. 572, 173 N.E. 872 (1930).
- 14 Parsons v. Prudential Real Estate Co., 86 Neb. 271, 125 N.W. 521 (1910).
- 15 U.S. v. Varani, 780 F.2d 1296 (6th Cir. 1986) (where an individual who, with his wife and children, had operated a dairy farm and grown crops on property for several years and who received utility service, mail, and telephone service was a person entitled to notice of redemption of the property).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

§ 918. Person in whose name land is assessed or taxed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3013](#), [3016](#)

The statutes may require the purchaser of tax certificates or the purchaser at a tax sale to give notice of redemption to the person in whose name the land is taxed or assessed.¹ Some courts express the view to the effect that even though the land is assessed to unknown owners, a notice is necessary and must be given by publication addressed to unknown persons.²

If the land is assessed to the wrong person, the notice must be sent to such person, and it is not sufficient if notice is sent to the true owner.³

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Footnotes

- 1 [First Nat. Bank v. Mohall State Bank](#), 53 N.D. 319, 206 N.W. 411 (1925).
- 2 [Berg v. Van Nest](#), 97 Minn. 187, 106 N.W. 255 (1906).
- 3 [Hawkeye Loan & Brokerage Co. v. Gordon](#), 115 Iowa 561, 88 N.W. 1081 (1902).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

§ 919. Necessity of personal notice; notice by publication and mail

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3013](#), [3014](#), [3017](#) to [3020](#)

The notice to redeem, or notice of proceedings by the tax sale purchaser to foreclose the right of redemption or otherwise perfect title, need not be personal unless so required by statute; no constitutional right of the owner is impaired by provisions which permit service by publication.¹ Indeed in some jurisdictions, actual notice of the expiration of the redemption period is not mandated by statutes or regulations, and notice by mail to the record owner generally satisfies due process commands.² Also, procedural due process did not require a commissioner of state lands, when learning that a notice sent by certified mail to the taxpayer's last known address informing the taxpayer of its right to redeem the tax-delinquent land was returned "forwarding order expired," to post a notice on the land or mail a notice to the physical address of the land, where the applicable statute only required that the commissioner send a notice to the taxpayer's last known address, the statute complied with procedural due process, and for due process purposes, the focus had to be on the constitutional adequacy of the statutory procedure rather than whether some additional effort in a particular case would have led to a more certain means of notice.³ However, it has been held that a statutory notice of redemption rights sent via certified mail to a tax-delinquent former property owner by the purchaser of the property at a tax sale, which mail was returned unclaimed, was an insufficient notice to the former property owner under the due process clause, and thus, the former property owner's period for redemption had not expired even though two delivery attempts were made and the former property owner acknowledged that she knew of the attempts to deliver the certified mail; when the certified mail was returned unclaimed, due process required the property purchaser to take additional reasonable steps to notify the former property owner such as notification via regular mail.⁴

A statute may require personal service of a notice of the expiration of the redemption period as to the portion of land upon which a homestead is located.⁵ A provision for service of notice by publication against nonresidents and all persons having or claiming to have any interest in the property does not violate due process of law.⁶ Such a proceeding, which involves no question

of personal liability, is not a proceeding in strict foreclosure in which every person interested in the property is entitled to be named and brought in by personal service.⁷ Defects in a personal notice of a tax sale of land and of the time when the period of redemption will expire, given by the tax sale purchaser to the owner in actual possession of the land pursuant to constitutional and statutory requirements of personal notice, cannot be cured by a newspaper publication of the notice.⁸

Where service of notice of the period of redemption by mail or registered mail is expressly required or authorized by statute, conformity with the statute, and with the rules and procedure of the Postal Service pertaining to the kind of mailing specified or allowed thereby, is a sufficient compliance, granting that all other duties and conditions contemplated as conditions precedent to such mailing have been fulfilled.⁹ Where such conditions have been fulfilled, the service is complete and constitutes a legal notice when mailed, or registered and mailed, by depositing it in a place of mailing, and actual receipt thereof is not essential, absent some other condition prescribed by statute or made to govern in particular circumstances.¹⁰

A tax sale will not be set aside where the chancery clerk used reasonable diligence to ascertain the landowners' address as required by statute.¹¹

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Footnotes

- 1 [Leigh v. Green](#), 193 U.S. 79, 24 S. Ct. 390, 48 L. Ed. 623 (1904); [Gathwright v. Mayor and Council of City of Baltimore](#), 181 Md. 362, 30 A.2d 252, 145 A.L.R. 590 (1943).
- 2 [Jones v. Grieg](#), 829 A.2d 195 (D.C. 2003) (holding that a District of Columbia's letter informing the taxpayers that a tax deed was going to be issued unless they paid back taxes fell short of due process requirement of notice after the envelope containing the notice of expiration of the redemption period was returned unclaimed more than three years earlier).
- 3 [Tsann Kuen Enterprises Co. v. Campbell](#), 355 Ark. 110, 129 S.W.3d 822 (2003).
- 4 [Schlereth v. Hardy](#), 280 S.W.3d 47 (Mo. 2009).
- 5 [Mund v. Rambough](#), 432 N.W.2d 50 (N.D. 1988).
- 6 [Gathwright v. Mayor and Council of City of Baltimore](#), 181 Md. 362, 30 A.2d 252, 145 A.L.R. 590 (1943).
- 7 [Gathwright v. Mayor and Council of City of Baltimore](#), 181 Md. 362, 30 A.2d 252, 145 A.L.R. 590 (1943).
- 8 [Gaither v. Lager](#), 2 Ill. 2d 293, 118 N.E.2d 4, 43 A.L.R.2d 980 (1954).
- 9 [Cota v. McDermott](#), 73 N.D. 459, 16 N.W.2d 54, 155 A.L.R. 1271 (1944).
- 10 [Cota v. McDermott](#), 73 N.D. 459, 16 N.W.2d 54, 155 A.L.R. 1271 (1944).
- 11 [Rush v. Wallace Rentals, LLC](#), 837 So. 2d 191 (Miss. 2003); [Reynolds v. Hoke](#), 226 W. Va. 497, 702 S.E.2d 629 (2010).

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72 Am. Jur. 2d State and Local Taxation § 920

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

§ 920. Service of notice and proof thereof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3013](#), [3014](#), [3018](#) to [3020](#)

The requirements of the statute as to the service and proof of service of the notice required to terminate an owner's right to redeem from a tax sale are usually considered to be mandatory¹ and must be strictly followed.² It will not be presumed that the requirements of such a statute have been complied with.³ There must be strict compliance with the requirement of the filing of an affidavit showing the making, manner, and place of service⁴ or, in case of inability to serve the notice, a strict compliance with the provisions regarding the proof to be filed showing the excuse for not serving the notice.⁵ A notice by publication is ineffective when the statute provides for personal service of the notice upon residents of the county.⁶ When there is no provision for substituted service or any provision for making service as provided for the service of summons, personal service is necessary.⁷

When an owner is a nonresident, the notice may be given either by mail or by publication, and an affidavit of the mailing of a notice of the time when the right to redeem from a tax sale will expire, filed with the court clerk pursuant to statute, is competent evidence of such mailing.⁸ When notice is given by mail, it is not essential that it be mailed within the state.⁹

A notice of the right to redeem is deemed to have been served upon a partnership that owned the property sold at a tax sale, and thus, the deed issued to the purchaser of the property after the redemption period ended is valid, where the notice was served via certified mail, and when the certified mail went unclaimed, the notice was provided by newspaper publication on three occasions.¹⁰

A tax sale purchaser, before resorting to service by publication of the notice of foreclosure of the right to redeem, must make reasonably diligent efforts beyond the use of the tax and real estate records in order to ascertain the address of the delinquent taxpayer.¹¹ The phrase "for any reason" in the statute providing for service by publication if the sheriff is unable for any reason to effect service upon any person required to be served a notice to foreclose the right to redeem following a tax sale is construed to mean that notice by publication is permissible only if the sheriff's inability to effect personal service satisfies the constitutional mandate of due process.¹²

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Footnotes

- 1 Smith v. Huber, 224 Iowa 817, 277 N.W. 557, 115 A.L.R. 131 (1938); Van Raden Homes, Inc. v. Dakota View Estates, 546 N.W.2d 843 (N.D. 1996) (holding that the requirements are jurisdictional).
- 2 Wilson v. Glos, 266 Ill. 392, 107 N.E. 630 (1914); Wilke v. Merchants' State Bank of Richardton, 61 N.D. 351, 237 N.W. 810 (1931).
- 3 Smith v. Huber, 224 Iowa 817, 277 N.W. 557, 115 A.L.R. 131 (1938); Wilke v. Merchants' State Bank of Richardton, 61 N.D. 351, 237 N.W. 810 (1931).
- 4 Lyman v. Walker, 192 Iowa 982, 185 N.W. 607 (1921).
- 5 Wilson v. Glos, 266 Ill. 392, 107 N.E. 630 (1914).
- 6 Smith v. Huber, 224 Iowa 817, 277 N.W. 557, 115 A.L.R. 131 (1938).
- 7 Wilke v. Merchants' State Bank of Richardton, 61 N.D. 351, 237 N.W. 810 (1931).
- 8 Nind v. Myers, 15 N.D. 400, 109 N.W. 335 (1906).
- 9 Nind v. Myers, 15 N.D. 400, 109 N.W. 335 (1906).
- 10 Cogar v. Lafferty, 219 W. Va. 743, 639 S.E.2d 835 (2006).
- 11 Hamilton v. Renewed Hope, Inc., 277 Ga. 465, 589 S.E.2d 81 (2003).
- 12 Hamilton v. Renewed Hope, Inc., 277 Ga. 465, 589 S.E.2d 81 (2003).

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72 Am. Jur. 2d State and Local Taxation § 921

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

D. Notice to Redeem; Notice of Proceedings to Perfect Tax Title

§ 921. Right of person receiving due notice to object to lack or insufficiency of notice given to another

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3013](#), [3016](#)

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[Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447](#)

Where statutory provisions as to notice to redeem are considered mandatory, some courts hold that failure to give due notice to one party entitled thereto may be taken advantage of by another party even though the latter has received due notice.¹ Another view is that the rights of those upon whom the notice has been properly served are cut off if they do not take steps to redeem within the proper time fixed for redemption by the notice even though such notice has not been served upon others having an interest in the property and whose rights to redeem therefore cannot be affected.²

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Footnotes

- ¹ [Brown v. Davis, 103 Colo. 110, 83 P.2d 326 \(1938\); Jensen Livestock Co. v. Custer County, 113 Mont. 285, 124 P.2d 1013, 140 A.L.R. 658 \(1942\); Anderson v. Roberts, 71 N.D. 345, 1 N.W.2d 338 \(1941\); Foreclosure](#)

2 of Tax Liens Pursuant to Section 75.521 Wisconsin Statutes by Waukesha County, List of Tax for the Year 1973, No. 12 v. Young, 106 Wis. 2d 244, 316 N.W.2d 362, 45 A.L.R.4th 437 (1982).
Nugent v. Lindsley, 100 N.J. Eq. 87, 135 A. 271 (Ch. 1926), *aff'd*, 109 N.J. Eq. 134, 156 A. 917 (Ct. Err. & App. 1931).

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72 Am. Jur. 2d State and Local Taxation Eleven LXI E Refs.

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

E. Effect of Change in Law Subsequent to Tax Sale

[Topic Summary](#) | [Correlation Table](#)

Research References

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West's Key Number Digest, [Constitutional Law](#) 🔑 2720, 4148

West's Key Number Digest, [Taxation](#) 🔑 3002, 3011, 3017, 3030, 3062

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72 Am. Jur. 2d State and Local Taxation § 922

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

E. Effect of Change in Law Subsequent to Tax Sale

§ 922. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2720, 4148

West's Key Number Digest, [Taxation](#) 🔑 3002, 3011, 3017, 3030, 3062

Some courts hold that the property owner's statutory right of redemption involves no contractual relation between the owner and the State.¹ Other courts support the view that the rights of the tax sale or tax certificate purchaser are to be determined by the laws in force at the time of the sale of the land or the certificates, which rights become part of the contract, the obligation of which cannot be impaired by subsequent legislation to the disadvantage of either.² Under this view, neither the right of property acquired by the purchaser at the tax sale nor the right of redemption remaining in the owner can be abridged in matters of substance by subsequent legislation³ but must be governed by the statutes in force at the time of the sale.⁴ Indeed, a taxpayer's right of redemption and a tax sale purchaser's rights stemming from the tax sale are governed by the law in force on the date of the tax sale.⁵

Only those changes which substantially impair obligations of contract cannot be made.⁶

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Footnotes

¹ [Mercury Herald Co. v. Moore](#), 22 Cal. 2d 269, 138 P.2d 673, 147 A.L.R. 1111 (1943).

² [Johnson v. Taylor](#), 150 Cal. 201, 88 P. 903 (1907); [Bernbaum v. Town of Nantucket](#), 419 Mass. 568, 646 N.E.2d 739 (1995); [State v. Krahmer](#), 105 Minn. 422, 117 N.W. 780 (1908); [State v. Osten](#), 91 Mont. 76, 5 P.2d 562 (1931).

- 3 State ex rel. Seville Holding Co. v. Draughon, 127 Fla. 528, 173 So. 353, 111 A.L.R. 234 (1937); State ex
rel. Federal Land Bank of Spokane v. Stephens, 182 Wash. 444, 47 P.2d 837 (1935).
- 4 Morris v. Card, 223 Ala. 254, 135 So. 340 (1931).
- 5 Selph v. Williams, 284 Ga. 349, 667 S.E.2d 40 (2008) (the rights of the parties as to the time for a tax
redemption are controlled by the law as it existed at the time of the tax sale); Sycamore Properties, LLC v.
Tabriz Realty, LLC, 870 A.2d 424 (R.I. 2005).
- 6 State v. Krahmer, 105 Minn. 422, 117 N.W. 780 (1908).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

E. Effect of Change in Law Subsequent to Tax Sale

§ 923. Changes adversely affecting owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [Constitutional Law](#)  2720, 4148

West's Key Number Digest, [Taxation](#)  3002, 3011, 3017, 3030, 3062

Tax redemption statutes which define the time within and the conditions upon which a property owner may redeem property from a tax sale give rise to contractual obligations in favor of the tax sale purchaser which cannot be changed in matters of substance to his or her detriment after the purchaser acquires title at a tax sale.¹ Some courts support the view that since the right of redemption and time for exercising it are accorded by the State as matters of grace and not of right, the legislature has the power to modify the exercise of the right in substantial particulars by subsequent legislation.² Under this view, statutes reducing the period of redemption from tax sales, when given retroactive operation to previous sales, do not constitute an unconstitutional impairment of contract obligations.³

Other courts have expressed the view to the effect that the owner's right of redemption from a tax sale, although of purely statutory origin, is contractual in nature and, in all matters of substance, must be governed by the law in force at the time of the tax sale, at which time the right of redemption attaches and cannot be affected in matters of substance by subsequent legislation.⁴ Under this view, an attempt to reduce the period of time for redemption, if retroactively applied to a sale made before the passage of the statute, is unconstitutional.⁵

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Footnotes

¹ [§ 924.](#)

- 2 Mercury Herald Co. v. Moore, 22 Cal. 2d 269, 138 P.2d 673, 147 A.L.R. 1111 (1943); Cota v. McDermott,
73 N.D. 459, 16 N.W.2d 54, 155 A.L.R. 1271 (1944).
- 3 Mercury Herald Co. v. Moore, 22 Cal. 2d 269, 138 P.2d 673, 147 A.L.R. 1111 (1943); Messer v. Lang, 129
Fla. 546, 176 So. 548, 113 A.L.R. 1073 (1937).
- 4 Lawrence v. Defenbach, 23 Idaho 78, 128 P. 81 (1912); Lockie v. Hammerstrom, 222 Iowa 451, 269 N.W.
507 (1936).
- 5 San Diego County v. Childs, 217 Cal. 109, 17 P.2d 734 (1932).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

E. Effect of Change in Law Subsequent to Tax Sale

§ 924. Changes adversely affecting purchaser

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2720, 4148

West's Key Number Digest, [Taxation](#) 🔑 3002, 3011, 3017, 3030, 3062

The tax sale purchaser acquires, at the time of purchase, contract rights with the State upon the basis of the laws of the state in force at the time securing and defining the respective rights of tax sale purchasers to perfect their titles and of delinquent taxpayers to redeem from tax sales, and those contract rights are protected from impairment to the disadvantage of the purchaser by subsequently enacted legislation.¹ A private purchaser of land at a delinquent tax sale or the purchaser of delinquent tax certificates is entitled to insist that as to matters of substance pertaining to the interest acquired and the right of redemption remaining in the owner, the law in force at the time of the sale will govern.² Changes in the remedy or in remedial rights, although adversely affecting the purchaser, are not, however, invalid.³

The rights of purchasers at tax sales which are protected from subsequent legislation are those of private purchasers; rights of a county, municipality, or other political subdivision purchasing property at a tax sale with respect to rights of redemption are not contractual in their nature and are not protected from impairment of subsequent legislation by the guaranty of impairment against obligation of contract.⁴ Neither does the rule that rights in tax proceedings are to be determined by the law in force at the time of the tax sale prevent the legislature from making changes in the manner of enforcing the lien which do not substantially impair any of the obligations of the contract.⁵

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Footnotes

- 1 State ex rel. Seville Holding Co. v. Draughon, 127 Fla. 528, 173 So. 353, 111 A.L.R. 234 (1937); Rott v. Steffens, 229 Mich. 241, 201 N.W. 227, 38 A.L.R. 224 (1924); State ex rel. Federal Land Bank of Spokane v. Stephens, 182 Wash. 444, 47 P.2d 837 (1935).
- 2 State ex rel. Seville Holding Co. v. Draughon, 127 Fla. 528, 173 So. 353, 111 A.L.R. 234 (1937); Rott v. Steffens, 229 Mich. 241, 201 N.W. 227, 38 A.L.R. 224 (1924); State v. Krahmer, 105 Minn. 422, 117 N.W. 780 (1908).
- 3 State v. Krahmer, 105 Minn. 422, 117 N.W. 780 (1908).
- 4 State ex rel. Dowling v. Butts, 111 Fla. 630, 149 So. 746, 89 A.L.R. 946 (1933); State v. Osten, 91 Mont. 76, 5 P.2d 562 (1931).
- 5 State v. Krahmer, 105 Minn. 422, 117 N.W. 780 (1908).

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72 Am. Jur. 2d State and Local Taxation § 925

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

E. Effect of Change in Law Subsequent to Tax Sale

§ 925. Changes adversely affecting purchaser— Reduction of interest or penalty payable by redemptioner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2720, 4148

West's Key Number Digest, [Taxation](#) 🔑 3002, 3030, 3062

Some courts hold that the right of a purchaser at a delinquent tax sale or a purchaser of delinquent tax certificates to interest upon redemption does not become fixed at the time of purchase and may be affected by subsequent legislation wholly prospective from its effective date.¹ Other courts have held that in the case of a private purchaser at a tax sale, the rate of interest payable by the owner upon redemption as fixed by statute at the time of the sale cannot be reduced by subsequent legislation,² and also that neither can the legislature constitutionally reduce or repeal a penalty imposed upon the owner as a condition of redemption, as to purchasers under tax sales made before the enactment of the amendatory statute.³ A different rule applies, however, when the county, a municipality, or other public body is the purchaser at the tax sale in that as to such bodies, the State is not prevented from enacting subsequent legislation reducing interest or penalties.⁴

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Footnotes

- 1 Everett v. Adamson, 106 Wash. 355, 180 P. 144 (1919).
- 2 Morris v. Card, 223 Ala. 254, 135 So. 340 (1931).
- 3 Morris v. Card, 223 Ala. 254, 135 So. 340 (1931); State ex rel. Seville Holding Co. v. Draughon, 127 Fla. 528, 173 So. 353, 111 A.L.R. 234 (1937).
- 4 State v. Lawler, 53 N.D. 278, 205 N.W. 880 (1925).

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72 Am. Jur. 2d State and Local Taxation § 926

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

E. Effect of Change in Law Subsequent to Tax Sale

§ 926. Changes in manner and time of notice of redemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2720, 4148

West's Key Number Digest, [Taxation](#) 🔑 3002, 3011, 3017

A tax certificate holder or tax sale purchaser may object to the imposition of any additional substantial burden upon him or her with respect to the owner's right of redemption or to any legislation relieving the owner from any obligation imposed by the contract.¹ Any attempt to exact a requirement of notice of redemption after the purchaser's right to a deed under the statute in effect at the time of sale has become absolute by the expiration of the redemption period unconstitutionally impairs the obligation of contract.² On the other hand, a change in the law in reference to the notice of redemption, which change imposes no new obligation upon the tax certificate holder or the purchaser at the tax sale, and which cannot have the effect of extending the time for redemption, such as a change in the contents of the notice, does not impair the purchaser's or holder's obligation of contract.³

When the purchase is made subject to a statute which requires the purchaser to give notice of the expiration of the period of redemption in order to perfect title, without in any way limiting the time within which such notice is to be given, a subsequent statute limiting the time of giving such notice does not impair any of the obligations of contract if a reasonable time to give such notice is allowed before the statute takes effect.⁴ The tax certificate holder can have no vested right in the privilege of delaying the giving of notice indefinitely even though the statute in force at the time of the purchase did not require the holder to give notice within a specified time.⁵

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Footnotes

- 1 State v. Krahmer, 105 Minn. 422, 117 N.W. 780 (1908).
2 Rott v. Steffens, 229 Mich. 241, 201 N.W. 227, 38 A.L.R. 224 (1924); State v. Krahmer, 105 Minn. 422,
 117 N.W. 780 (1908).
 As to the rule where an attempt is made to extend the time for redemption, see § 927.
3 State v. Krahmer, 105 Minn. 422, 117 N.W. 780 (1908).
4 State v. Krahmer, 105 Minn. 422, 117 N.W. 780 (1908).
5 State v. Krahmer, 105 Minn. 422, 117 N.W. 780 (1908).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

E. Effect of Change in Law Subsequent to Tax Sale

§ 927. Changes in manner and time of notice of redemption—Extension of time for redemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2720, 4148

West's Key Number Digest, [Taxation](#) 🔑 3002, 3011, 3017

The statutes attempting to extend the time for redemption from a tax sale, or giving such right when none existed before, cannot constitutionally be given retroactive operation as against purchasers at the tax sale.¹ The right of a purchaser other than the state or some governmental agency, acting as such, at the sale under a statute which fixes a period of time for redemption, is a contract right which cannot be impaired by a statute passed subsequently to such sale extending the period formerly allowed for redeeming the land from tax sales even though such statute may have been enacted before the expiration of the original period for redemption.² An attempt to extend the time for redemption from a sale of land for nonpayment of an improvement district tax impairs the obligation of the contract of existing bondholders of the improvement district, given by statute the right to foreclose and sell land in the district in default of the payment of taxes thereon.³ The statute is not saved by the fact that the statute has been enacted before the expiration of the original period for redemption⁴ or that the sale has not been confirmed before the extension is attempted.⁵

The time for redemption may not be extended indirectly through provisions for giving of notice of redemption.⁶ The legislature may, however, bind the State or its subdivisions or its assignee by an act extending the time of redemption from tax sales, because as to the State or its subdivisions, the grant of additional time to landowners to redeem is with its consent, and as respects subsequent assignees of the interest acquired by the State, they take subject to conditions imposed by the statute in force at the time of the assignment.⁷

A statute extending the time for redemption from sales made to the county does not violate a state constitutional provision prohibiting the postponement of obligations or liabilities to the State.⁸ Neither does such a statute violate constitutional requirements of uniform nor equal rates of ad valorem taxation.⁹

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Footnotes

- 1 Walker v. Ferguson, 176 Ark. 625, 3 S.W.2d 694 (1928); State ex rel. Cleveringa v. Klein, 63 N.D. 514, 249 N.W. 118, 86 A.L.R. 1523 (1933); Dallas County Levee Improvement Dist. No. 6 v. Rugel, 36 S.W.2d 188 (Tex. Comm'n App. 1931); Milkint v. McNeeley, 113 W. Va. 804, 169 S.E. 790 (1933).
- 2 Smith v. Spillman, 135 Ark. 279, 205 S.W. 107, 1 A.L.R. 136 (1918); State ex rel. Dowling v. Butts, 111 Fla. 630, 149 So. 746, 89 A.L.R. 946 (1933); Rott v. Steffens, 229 Mich. 241, 201 N.W. 227, 38 A.L.R. 224 (1924); State ex rel. Federal Land Bank of Spokane v. Stephens, 182 Wash. 444, 47 P.2d 837 (1935).
- 3 Dallas County Levee Improvement Dist. No. 6 v. Rugel, 36 S.W.2d 188 (Tex. Comm'n App. 1931).
- 4 Solis v. Williams, 205 Mass. 350, 91 N.E. 148 (1910).
- 5 Smith v. Spillman, 135 Ark. 279, 205 S.W. 107, 1 A.L.R. 136 (1918).
- 6 Harrison v. Thomas, 103 Va. 333, 49 S.E. 485 (1905).
As to a change in the law regarding notice, see § 926.
- 7 State ex rel. Dowling v. Butts, 111 Fla. 630, 149 So. 746, 89 A.L.R. 946 (1933).
- 8 Lewis v. Tipton, 29 N.M. 269, 222 P. 661 (1924).
- 9 State ex rel. Dowling v. Butts, 111 Fla. 630, 149 So. 746, 89 A.L.R. 946 (1933).

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72 Am. Jur. 2d State and Local Taxation Eleven LXI F Refs.

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

F. Effect of Failure of Officer to Require Compliance with Conditions of Redemption; Waiver of Requirement by Officer

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3010](#), [3033](#), [3037](#), [3041](#)

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A.L.R. Index, Tax Sales

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72 Am. Jur. 2d State and Local Taxation § 928

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

F. Effect of Failure of Officer to Require Compliance with Conditions of Redemption; Waiver of Requirement by Officer

§ 928. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3010](#), [3033](#), [3037](#), [3041](#)

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[Effect of certificate, statement \(or refusal thereof\), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273](#)

The general rule is that when a failure to comply with the requirements of the redemption statute is due to the fault or mistake of the public officer whose duty it is to furnish the taxpayer with the requisite information, and upon whose advice or direction the tax redemptioner has relied in good faith and without negligence on his or her own part, his or her rights will not be cut off.¹ Indeed, equitable relief may be available to a person seeking to redeem property from a tax sale who has been misled by the public official responsible for handling the redemption.² For purposes of granting equitable relief to a tax redemptioner who has been misled by a public official handling the redemption, the mistake or inadvertence on the part of the public officer cannot be a conscious departure from the law on his or her part, and the public officer has no authority to affect the purchaser at the tax sale or the purchaser of tax certificates by a deliberate disregard of the redemption requirements known both to the officer and the owner or to indicate that the officer can waive compliance by the tax redemptioner with the statutory requirements governing the right of redemption.³

Footnotes

- 1 [Lyman v. Walker](#), 192 Iowa 982, 185 N.W. 607 (1921); [State v. McCollough](#), 85 Mont. 435, 279 P. 246, 66 A.L.R. 1033 (1929); [Fernandez Co. v. Montoya](#), 42 N.M. 524, 82 P.2d 289, 118 A.L.R. 573 (1938); [Higgins v. Trauger](#), 2001 ND 149, 632 N.W.2d 463 (N.D. 2001); [Koehn v. Fluman](#), 1942 OK 146, 191 Okla. 71, 126 P.2d 1002 (1942).
- 2 [Higgins v. Trauger](#), 2001 ND 149, 632 N.W.2d 463 (N.D. 2001).
- 3 [Higgins v. Trauger](#), 2001 ND 149, 632 N.W.2d 463 (N.D. 2001).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

F. Effect of Failure of Officer to Require Compliance with Conditions of Redemption; Waiver of Requirement by Officer

§ 929. As excusing failure to tender payment in cash

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3010](#), [3033](#), [3037](#), [3041](#)

A valid redemption cannot be based upon the act of an officer in accepting in redemption a worthless check or other worthless paper.¹ The proper public officer's acceptance within the redemption period of a check, money order, or other paper in redemption is sufficient therefor even though it is not a strict compliance with the law,² particularly where, in due course, the amount of money for which the same was received is realized thereon and especially where the officer after making collection on the paper tenders the money to the certificate holder.³

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Footnotes

- 1 [Wunschel v. Simonsen](#), 250 Iowa 1099, 96 N.W.2d 432 (1959); [State v. McCollough](#), 85 Mont. 435, 279 P. 246, 66 A.L.R. 1033 (1929).
- 2 [Thompson v. Crains](#), 294 Ill. 270, 128 N.E. 508, 12 A.L.R. 931 (1920); [Fernandez Co. v. Montoya](#), 42 N.M. 524, 82 P.2d 289, 118 A.L.R. 573 (1938).
- 3 [Smith v. Freeman](#), 175 Ark. 856, 300 S.W. 445 (1927); [Beck v. Meroney](#), 135 N.C. 532, 47 S.E. 613 (1904); [Field v. Pier](#), 150 Wis. 83, 135 N.W. 496 (1912).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

F. Effect of Failure of Officer to Require Compliance with Conditions of Redemption; Waiver of Requirement by Officer

§ 930. As excusing failure to tender proper amount of payment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3010](#), [3033](#), [3037](#), [3041](#)

Where one in attempting to redeem his or her premises from tax sale, in good faith and without fault, pays to the proper officer the amount which that officer, or the one having charge of the tax records, states is the full amount required for redemption, a redemption results even though through a mistake of the officer, the amount paid is less than that properly required.¹ A taxpayer has the right to rely upon the representations and acts of the proper public officers with respect to taxes due on property.² The rule extends only to cases where the failure to pay all that should be paid in redemption is not in part due to the negligence of the redemptioner.³ A person, having been advised that an error had been made with respect to information previously furnished as to the amount necessary to be paid in order to redeem, will be denied affirmative relief where such person has not changed positions in reliance on such information but nonetheless refused to pay the amount justly due.⁴

If the owner's payment of the amount stated by the officer as necessary for redemption effects a redemption notwithstanding the officer's mistaken underestimate of the amount required, the title of the redemptioner is not dependent upon his or her making good the deficiency.⁵ Some courts hold that a discharge of the tax sale, where the redemption money paid is less than that properly required, may depend upon the owner's payment of the deficiency occasioned by the officer's mistake.⁶ Other courts have expressed the view that where the officer receives in redemption the amount that the officer mistakenly states to be the full amount necessary for redemption, and the owner pays that amount in good faith and without fault, the remedy of the tax purchaser is against the officer.⁷

A collector's error which keeps the owner from having full knowledge of the delinquency cannot be used to aid in causing the owner's subsequent forfeiture of the property through forced sale by the State.⁸

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Footnotes

- 1 Ludeman v. Armbruster, 1946 OK 38, 196 Okla. 452, 165 P.2d 835 (1946).
- 2 Kershner v. Sganzi, 45 N.M. 195, 113 P.2d 576, 134 A.L.R. 1290 (1941).
- 3 Kitchens v. Machen, 210 Ark. 1046, 198 S.W.2d 833 (1947); Menasha Wooden Ware Co. v. Harmon, 128 Wis. 177, 107 N.W. 299 (1906).
- 4 Krienke v. State, 69 Cal. App. 2d 353, 158 P.2d 941 (4th Dist. 1945).
- 5 Skach v. Sykora, 6 Ill. 2d 215, 127 N.E.2d 453, 52 A.L.R.2d 1320 (1955).
- 6 Smith v. Brooks, 1946 OK 13, 196 Okla. 368, 165 P.2d 352 (1946).
- 7 Laist v. Nichols, 139 Cal. App. 202, 33 P.2d 866 (4th Dist. 1934); Drew v. Bowman County, 60 N.D. 410, 235 N.W. 138 (1931).
- 8 Herrington v. Weigel, 82 Cal. App. 3d 676, 147 Cal. Rptr. 396 (4th Dist. 1978).

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72 Am. Jur. 2d State and Local Taxation § 931

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXI. Redemption

F. Effect of Failure of Officer to Require Compliance with Conditions of Redemption; Waiver of Requirement by Officer

§ 931. As excusing failure to redeem within required time

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3010](#), [3033](#), [3037](#), [3041](#)

While a public officer authorized to receive money in redemption from tax sales cannot waive or excuse a failure to redeem within the time prescribed by law,¹ a failure to redeem within the time limited by statute due to a dereliction of duty by tax officers is ordinarily excused,² at least where the failure is not due to any unjustified negligence by the taxpayer but arises because of the taxpayer's reliance in good faith upon the information supplied by the officer.³ A similar rule applies where the failure of a taxpayer to make payment of redemption money within the time limited by statute arises from the failure, inability, or refusal of the officer whose duty it is to furnish information as to the amount required to redeem to give the proper or necessary information.⁴

While it is not negligence for a taxpayer to rely upon the information given by the officer and to fail to make personal examinations of the records and the certificate of redemption,⁵ where the taxpayer has knowledge from other sources that his or her property has been sold for taxes, or where the taxpayer fails to inquire about tax sales, he or she is not entitled to rely upon the information given by the officer, and the taxpayer's time to redeem is not extended by reason thereof.⁶

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Footnotes

- ¹ [State v. McCollough](#), 85 Mont. 435, 279 P. 246, 66 A.L.R. 1033 (1929).
As to time of payment, see § 905.

- 2 Word v. Grigsby, 206 Ark. 164, 174 S.W.2d 439 (1943); Kershner v. Sganzi, 45 N.M. 195, 113 P.2d 576,
134 A.L.R. 1290 (1941).
- 3 Lyman v. Walker, 192 Iowa 982, 185 N.W. 607 (1921); Kershner v. Sganzi, 45 N.M. 195, 113 P.2d 576,
134 A.L.R. 1290 (1941); Koehn v. Fluman, 1942 OK 146, 191 Okla. 71, 126 P.2d 1002 (1942).
- 4 Gonzales v. Harrington Co., 2 N.J. Misc. 311, 126 A. 38 (Ch. 1923); Gammill v. Mann, 41 N.M. 552, 72
P.2d 12 (1937).
- 5 Burchardt v. Scofield, 141 Iowa 336, 117 N.W. 1061 (1908).
- 6 Menasha Wooden Ware Co. v. Harmon, 128 Wis. 177, 107 N.W. 299 (1906).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

A. In General

[Topic Summary](#) | [Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2997, 3141, 3148 to 3151, 3180(1), 3180(3), 3181

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A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#)  2997, 3141, 3148 to 3151, 3180(1), 3180(3), 3181

Trial Strategy

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property, 28 Am. Jur. Proof of Facts 3d 439](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 152, 153, 156, 162, 167, 173](#)

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72 Am. Jur. 2d State and Local Taxation § 932

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

A. In General

§ 932. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2997](#), [3141](#), [3148](#) to [3151](#), [3180\(1\)](#), [3180\(3\)](#), [3181](#)

Trial Strategy

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property](#), 28 Am. Jur. Proof of Facts 3d 439

The purchaser at a tax sale buys strictly under the rule of caveat emptor.¹ In the absence of any statutory provision to the contrary, there is no warranty by the State or other public body making the sale.² If the purchaser's title proves defective for want of compliance with the law in proceedings leading up to the sale or in the conduct of the sale, the purchaser has no affirmative remedy other than that which is provided by statute.³ A landowner seeking equitable relief against an alleged invalid tax sale is ordinarily entitled to such relief upon the condition that he or she reimburse the tax sale purchaser.⁴

A purchaser at an invalid tax sale cannot call upon a municipality to re-levy a special assessment for his or her benefit.⁵

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Footnotes

¹ [§ 937.](#)

- 2 *Parsons v. Marshall*, 243 Miss. 719, 139 So. 2d 833 (1962).
3 *Parsons v. Marshall*, 243 Miss. 719, 139 So. 2d 833 (1962); *Howerton v. Board of Com'rs of Tulsa County*,
 1942 OK 127, 191 Okla. 169, 127 P.2d 173 (1942).
4 §§ 947 to 950.
5 *Barkley v. City of Lincoln*, 82 Neb. 181, 117 N.W. 398 (1908).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

A. In General

§ 933. Who may contest title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2997, 3148 to 3151

The validity of a tax title or of a tax sale can be challenged only by one who can show that he or she or those under whom he or she claims had some title to or interest in the property at the time of the sale.¹ A suit in equity by holders of liens superior to a mortgage to redeem property from a tax title acquired by the mortgagee is not within the operation of a statute providing that before a tax deed may be attacked, it must be shown that the claimants were owners of the realty at the time of the tax sale.² However, a tax title may be contested by a holder of a prior judgment lien,³ one holding legal title to realty as trustee for the benefit of an educational or benevolent association,⁴ and, as regards property owned by the United States, the United States or any purchaser from the United States other than a state.⁵

The necessity of proof by the taxpayer of strict compliance with the statute exists only in a controversy between the taxpayer and the former owner or one claiming under the former owner; as against a mere intruder, it is sufficient to show a tax deed.⁶ In bringing an ejectment action to recover possession of the land, the purchaser needs only to exhibit a tax deed valid on its face because this is such a prima facie title as is sufficient to put the defendant on proof of a better right.⁷ The party challenging the validity of a tax sale has the burden of proof.⁸

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Footnotes

- 1 Hopper v. Chandler, 183 Ark. 469, 36 S.W.2d 398 (1931); Goldsbury v. MacConnell, 73 Colo. 351, 215 P.
872 (1923); Gee v. Bullock, 349 Mo. 1154, 164 S.W.2d 281 (1942); Smith v. Whitney, 105 Mont. 523, 74
P.2d 450 (1937); Hibernia Commercial & Savings Bank v. McArthur, 121 Or. 413, 255 P. 466 (1927).
- 2 Koch v. Kiron State Bank of Kiron, 230 Iowa 206, 297 N.W. 450, 140 A.L.R. 273 (1941).
- 3 Cherry v. Hutchman, 1951 OK 258, 205 Okla. 206, 236 P.2d 687 (1951).
- 4 Hahn v. Walworth County, 14 Wis. 2d 147, 109 N.W.2d 653, 94 A.L.R.2d 618 (1961).
- 5 Daniell v. Sherrill, 48 So. 2d 736, 23 A.L.R.2d 1410 (Fla. 1950).
- 6 Goldsbury v. MacConnell, 73 Colo. 351, 215 P. 872 (1923).
- 7 Delaware, L. & W. R. Co. v. Tobyhanna Co., 228 Pa. 487, 77 A. 811 (1910).
- 8 Henderson County v. Osteen, 297 N.C. 113, 254 S.E.2d 160 (1979).

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State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

A. In General

§ 934. Estoppel to deny validity of title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3149

A.L.R. Library

[Estoppel of United States, state, or political subdivision by deed or other instrument, 23 A.L.R.2d 1419](#)

The principles of equitable estoppel in pais may be invoked against the owner of land which has been sold for nonpayment of taxes when he or she seeks to attack the title of the purchaser at the tax sale.¹ Mere inaction by a landowner with knowledge that his or her land has been sold for nonpayment of taxes does not, however, estop the landowner from contesting the validity of the sale.² A State whose tax deed of property owned by the United States is invalid and which subsequently acquires title from the United States is estopped from questioning the validity of its tax deed and the truth of its recitals.³

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Footnotes

- ¹ [Davis v. Neal, 100 Ark. 399, 140 S.W. 278 \(1911\).](#)
As to equitable estoppel in pais, generally, see [Am. Jur. 2d, Estoppel and Waiver § 26.](#)
- ² [Davis v. Neal, 100 Ark. 399, 140 S.W. 278 \(1911\).](#)

3 [Daniell v. Sherrill, 48 So. 2d 736, 23 A.L.R.2d 1410 \(Fla. 1950\).](#)

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72 Am. Jur. 2d State and Local Taxation § 935

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

A. In General

§ 935. Remedies of owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3141](#), [3148](#), [3180\(1\)](#), [3180\(3\)](#), [3181](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 152](#) (Complaint, petition, or declaration—To cancel tax deed—General form)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 153](#) (Complaint, petition, or declaration—To set aside tax sale and cancel tax sale certificate—General form)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 156](#) (Complaint, petition, or declaration—To set aside cancellation of tax sale—General form)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 162](#) (Answer—Defense—Judgment of tax deed's validity as res judicata)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 167](#) (Judgment or decree—For cancellation of tax deed—General form)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 173](#) (Complaint, petition, or declaration—To cancel tax deed—Lack of notice of right to redeem)

Where a tax sale is void because of an irregularity or illegality in the proceedings and the purchaser takes or attempts to take possession under a deed, the owner's remedy is an action for ejectment or trespass.¹ If the purchaser, although not attempting

to take possession of the land, causes an invalid tax deed to be recorded and refuses to release his or her interest thereunder to the owner, the owner may seek equitable relief.² The purchaser of the land is entitled to a quiet title under some circumstances, after holding it for a certain number of years, if the former owner does nothing to upset the sale.³

Where the owner is not seeking equitable relief, but seeks to enforce a legal title, the doctrine of laches will not apply, and the owner can be barred only by the statute of limitations.⁴

The lawful owner of land is entitled to recover the rents and profits from the holder of a tax title in possession whose title has been adjudged invalid or void.⁵

Where a tax deed is invalid because of a county's failure to comply with statutory requirements regarding designating newspapers for the publication of the concurrent resolution, the owners are entitled to a quitclaim deed upon the payment of a sum of money equal to the total amount paid by the purchaser at the tax sale to the county plus interest.⁶

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Footnotes

- 1 [Steltz v. Morgan](#), 16 Idaho 368, 101 P. 1057 (1909); [Howell v. Shannon](#), 80 Miss. 598, 31 So. 965 (1902).
- 2 [Whitehouse v. Jones](#), 60 W. Va. 680, 55 S.E. 730 (1906).
- 3 [Nero v. Bergin](#), 239 La. 793, 120 So. 2d 78 (1960).
- 4 [Davis v. Neal](#), 100 Ark. 399, 140 S.W. 278 (1911).
- 5 [Wilcox v. Westerheide](#), 1947 OK 196, 199 Okla. 312, 185 P.2d 452, 173 A.L.R. 1171 (1947).
- 6 [Walsh v. Blair](#), 89 Misc. 2d 989, 393 N.Y.S.2d 236 (County Ct. 1977).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 936

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

A. In General

§ 936. Conditions of obtaining relief

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3180\(1\)](#), [3180\(3\)](#), [3181](#)

Generally, a landowner attacking an invalid tax sale must, as a condition of asserting his or her rights, particularly when equitable relief is sought against an invalid tax sale, reimburse the purchaser for his or her expenditures.¹ Some statutes require the challenger to the validity of a tax sale to deposit all delinquent taxes, penalties, and interest with the court even though no tax deed had been issued to the purchaser of the tax sale certificates.² Statutes making the payment of current taxes precedent to an attack upon a tax title are constitutional.³

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Footnotes

- ¹ § 947.
- ² *Fibelstad v. Grant County*, 474 N.W.2d 54 (N.D. 1991).
- ³ *Meriwether v. Overly*, 228 Mo. 218, 129 S.W. 1 (1910).

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72 Am. Jur. 2d State and Local Taxation Eleven LXII B Refs.

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes


LXII. Rights and Remedies in Case of Invalid Sale

B. Rights and Remedies of Purchaser

[Topic Summary](#) | [Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#)  [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 142, 154, 163 to 166, 172](#)

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72 Am. Jur. 2d State and Local Taxation § 937

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale


B. Rights and Remedies of Purchaser

1. Against Taxing Body

§ 937. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

In the absence of a statute to the contrary, the doctrine of caveat emptor applies against purchasers at tax sales in favor of the county, municipality, or other taxing authority.¹ Also, the purchaser assumes the risk of all irregularities and illegalities in the proceeding.² While the doctrine of caveat emptor is not extended as far as to enable the owner to obtain affirmative relief in equity against an invalid tax sale without reimbursing the purchaser thereunder,³ in the absence of a statutory provision, the holder of a tax certificate or a tax deed issued at an invalid tax sale cannot, when the invalidity of his or her title is subsequently determined or becomes apparent, obtain reimbursement from the county, municipality, or other taxing body which received the money under such invalid sale.⁴

The rule precludes the purchaser from recovering the expense of defending the tax title⁵ or from recovering the amount of taxes paid subsequently to the sale but before the title is declared invalid.⁶

There is no statutory remedy against the state and county for compensatory damages based on the buyer's failure to investigate the public records concerning the suitability for construction of the property purchased at a tax sale.⁷

CUMULATIVE SUPPLEMENT

Cases:

At a tax sale the bidders or purchasers are chargeable with notice and knowledge of the existing statutory requirements for a valid sale, and the statutory conditions upon which a valid deed may be acquired; and must be held to have purchased subject to such statutory provisions. [SASS Muni-V, LLC v. DeSoto County](#), 170 So. 3d 441 (Miss. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Routh v. Quinn](#), 20 Cal. 2d 488, 127 P.2d 1, 149 A.L.R. 215 (1942); [Board of Com'rs of Washington County v. Lavington](#), 91 Colo. 252, 14 P.2d 493 (1932); [Gauger v. State](#), 249 Kan. 86, 815 P.2d 501 (1991); [Parsons v. Marshall](#), 243 Miss. 719, 139 So. 2d 833 (1962); [Quirin v. Weinberg](#), 252 Mont. 386, 830 P.2d 537 (1992); [Lindlots Realty Corporation v. Suffolk County](#), 278 N.Y. 45, 15 N.E.2d 393, 116 A.L.R. 1401 (1938); [Howerton v. Board of Com'rs of Tulsa County](#), 1942 OK 127, 191 Okla. 169, 127 P.2d 173 (1942); [Morse v. King](#), 137 Vt. 49, 398 A.2d 299 (1979); [Brewer v. Folsom Bros. Co.](#), 43 Wyo. 433, 5 P.2d 283 (1931).
- 2 [Routh v. Quinn](#), 20 Cal. 2d 488, 127 P.2d 1, 149 A.L.R. 215 (1942); [Lindner v. City of New Orleans](#), 116 La. 372, 40 So. 736 (1906).
- 3 § 947.
- 4 [Board of Com'rs of Washington County v. Lavington](#), 91 Colo. 252, 14 P.2d 493 (1932); [Elder v. Chambliss](#), 195 Ga. 148, 23 S.E.2d 176 (1942); [Howerton v. Board of Com'rs of Tulsa County](#), 1942 OK 127, 191 Okla. 169, 127 P.2d 173 (1942); [Parrott v. Abernathy](#), 58 S.D. 603, 237 N.W. 900, 77 A.L.R. 818 (1931); [Shelton v. Klickitat County](#), 152 Wash. 193, 277 P. 839 (1929).
- 5 [Lindlots Realty Corporation v. Suffolk County](#), 278 N.Y. 45, 15 N.E.2d 393, 116 A.L.R. 1401 (1938).
- 6 [Lisso & Bro. v. Police Jury of Parish of Natchitoches](#), 127 La. 283, 53 So. 566 (1910); [Parrott v. Abernathy](#), 58 S.D. 603, 237 N.W. 900, 77 A.L.R. 818 (1931).
- 7 [Craland, Inc. v. State of California](#), 214 Cal. App. 3d 1400, 263 Cal. Rptr. 255 (2d Dist. 1989).

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72 Am. Jur. 2d State and Local Taxation § 938

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale


B. Rights and Remedies of Purchaser

1. Against Taxing Body

§ 938. Rationale of rule

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

The reasons for the strict application of the doctrine of caveat emptor against a tax sale purchaser to bar any claim against the public taxing body for reimbursement are that—

- the tax records are open to the inspection of the purchaser, and the law presumes that the purchaser knows the status of the record.¹
- the purchaser is in effect a volunteer in the payment of the tax.²
- the rule is necessary to avoid uncertainty in public finances.³

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Footnotes

- 1 [Routh v. Quinn](#), 20 Cal. 2d 488, 127 P.2d 1, 149 A.L.R. 215 (1942); [Lisso & Bro. v. Police Jury of Parish of Natchitoches](#), 127 La. 283, 53 So. 566 (1910).
- 2 [Bell v. Los Angeles County](#), 90 Cal. App. 602, 266 P. 291 (3d Dist. 1928).
- 3 [Joliet Stove Works v. Kiep](#), 230 Ill. 550, 82 N.E. 875 (1907); [Williams v. Inhabitants of Town of Dedham](#), 207 Mass. 412, 93 N.E. 696 (1911).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 939

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale


B. Rights and Remedies of Purchaser

1. Against Taxing Body

§ 939. Limitations on and exceptions to rule; effect of fraud

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

The right to recover is generally denied even as to sales made to collect taxes to which the property in question is not subject.¹ A fraud or misrepresentation by public authorities may, however, entitle the purchaser to a rescission,² whether the fraud be constructive or actual.³ The fact that the grantee was chargeable with knowledge that representations by a county treasurer in a deed conveying property acquired by the county at a tax sale were in excess of his or her authority does not bar rescission, particularly where the money is retained in the treasury of the taxing authority.⁴

The doctrine of caveat emptor does not apply to preclude a purchaser of lands from a county which had bid on them at a tax sale from seeking to rescind and recover what he or she had paid because of the falsity of a representation in the deed as to the fact of publication of the notice of tax sale.⁵

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Footnotes

- ¹ [Nevada County v. Dickey](#), 68 Ark. 160, 56 S.W. 779 (1900); [Bell v. Los Angeles County](#), 90 Cal. App. 602, 266 P. 291 (3d Dist. 1928); [Lisso & Bro. v. Police Jury of Parish of Natchitoches](#), 127 La. 283, 53 So. 566 (1910); [Parrott v. Abernathy](#), 58 S.D. 603, 237 N.W. 900, 77 A.L.R. 818 (1931).
- ² [Lindlots Realty Corporation v. Suffolk County](#), 278 N.Y. 45, 15 N.E.2d 393, 116 A.L.R. 1401 (1938).

- 3 [Worman v. Echo Ridge Homes Co-op., Inc.](#), 98 N.M. 237, 647 P.2d 870 (1982).
4 [Lindlots Realty Corporation v. Suffolk County](#), 278 N.Y. 45, 15 N.E.2d 393, 116 A.L.R. 1401 (1938).
5 [Lindlots Realty Corporation v. Suffolk County](#), 278 N.Y. 45, 15 N.E.2d 393, 116 A.L.R. 1401 (1938).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 940

American Jurisprudence, Second Edition | May 2021 Update

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale


B. Rights and Remedies of Purchaser

1. Against Taxing Body

§ 940. Statutory right

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) , [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

Statutes may relieve purchasers of delinquent tax certificates and purchasers of land at tax sales from the hardship of the common-law rule which denies such a purchaser the right to recover from the county or other taxing authority the amount paid when the sale proves invalid by providing the means whereby the purchaser may have reimbursement for the amount paid.¹ The purchaser is limited to the remedies provided by statute and has no right to common-law remedies for defects in a tax sale proceeding.² The purchaser must bring himself or herself clearly within the terms of the statute in order to recover thereunder.³

Under a statute permitting recovery where, by a mistake or wrongful act of some specified officer, land has been sold on which no tax was due at the time, there can be no recovery if the mistake or wrongful act was that of some officer other than the one so specified.⁴ Under a statute providing for a refund to the purchaser when property has been sold which at the time of its assessment was not taxable or upon which no tax was due at the time of the sale, where a part of the delinquent taxes for which the property was sold has been lawfully imposed, the purchaser cannot claim a refund in respect of those that were unlawfully imposed.⁵

A statute requiring the owner, as a condition of the right to recover the land or to invalidate a tax deed, to pay or tender taxes due upon the property, with interest, penalties, and costs, requires a tender in cases where the land is liable for taxation and has been assessed and extended upon the tax rolls in substantial compliance with statutes even though the tax deed may be void on its face or void for jurisdictional reasons.⁶ However, payments of the purchase price and subsequent taxes by a purchaser

of property acquired by a county at a tax sale are not voluntary payments so as to defeat recovery under a statute providing for refund to a purchaser of tax-delinquent property upon failure of the tax title.⁷

The statute of limitations does not begin to run against the statutory right of the purchaser of tax-delinquent property from a county to a refund of payments made under the contract to purchase, upon failure of the title, until the county's tax title is declared invalid.⁸

Observation:

A tax sale purchaser, who does not seek an order to issue a deed, is not entitled to a refund for the purchase price of the property minus the 25% penalty, where the statute regarding refund requires a refusal by the court, not merely a failure by the purchaser to qualify for a deed.⁹

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Footnotes

- 1 In re Estate of Barnes, 754 A.2d 284 (D.C. 2000); Shea v. Owyhee County, 66 Idaho 159, 156 P.2d 331, 157 A.L.R. 391 (1945); Brown v. Glebe, 213 Neb. 318, 328 N.W.2d 786 (1983); Parks v. Lyons, 1938 OK 528, 183 Okla. 529, 83 P.2d 573 (1938); Red Oak Lands, Inc. v. Lane, 268 S.C. 631, 235 S.E.2d 718 (1977); Parrott v. Abernathy, 58 S.D. 603, 237 N.W. 900, 77 A.L.R. 818 (1931); First Nat. Bank v. Douglas County, 124 Wis. 15, 102 N.W. 315 (1905).
- 2 Quelimane Co. v. Stewart Title Guaranty Co., 19 Cal. 4th 26, 77 Cal. Rptr. 2d 709, 960 P.2d 513 (1998), as modified, (Sept. 23, 1998).
- 3 Board of Com'rs of Washington County v. Lavington, 91 Colo. 252, 14 P.2d 493 (1932); Parrott v. Abernathy, 58 S.D. 603, 237 N.W. 900, 77 A.L.R. 818 (1931).
- 4 Stewart v. Board of Com'rs of Bernalillo County, 12 N.M. 79, 75 P. 43 (1904).
- 5 Parrott v. Abernathy, 58 S.D. 603, 237 N.W. 900, 77 A.L.R. 818 (1931).
- 6 Parks v. Lyons, 1938 OK 528, 183 Okla. 529, 83 P.2d 573 (1938).
- 7 Shea v. Owyhee County, 66 Idaho 159, 156 P.2d 331, 157 A.L.R. 391 (1945).
- 8 Shea v. Owyhee County, 66 Idaho 159, 156 P.2d 331, 157 A.L.R. 391 (1945).
- 9 In re Parcels Sold for Delinquent Taxes, 873 N.E.2d 1051 (Ind. 2007).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 941

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale


B. Rights and Remedies of Purchaser

1. Against Taxing Body

§ 941. Sale antedating enactment of refund statute; modification of statute after sale

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

A statute providing for the refund by the taxing authority of the amount paid by a purchaser at an invalid tax sale has been held inapplicable to a sale antedating the statute.¹ However, it has also been held that the purchaser is entitled to reimbursement even though the tax sale occurred prior to the enactment of the statute where it also appears that the tax sale was not declared or determined to be invalid until after the effective date of the statute.²

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Footnotes

¹ [American Inv. Co. of Emmetsburgh v. Beadle County](#), 5 S.D. 410, 59 N.W. 212 (1894).

² [Shea v. Owyhee County](#), 66 Idaho 159, 156 P.2d 331, 157 A.L.R. 391 (1945).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 942

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale


B. Rights and Remedies of Purchaser

2. Against Tax Officers or Their Bond

§ 942. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

Generally, by reason of the application of the doctrine of caveat emptor to tax sales, the tax officer is not personally liable to the purchaser at an invalid tax sale in the absence of statute.¹ Moreover, the liability of a public officer is neither enlarged nor diminished by a statute providing that official bonds will be security to all persons severally who are victims of official delinquency.² The rule of caveat emptor applies also when the officer, in selling property for taxes, acts under a void statute.³

A collector is not liable for a defect in a tax title arising because of the failure of the collector to comply strictly with the requirements of the law.⁴

CUMULATIVE SUPPLEMENT

Cases:

Trial court did not abuse its discretion by excluding pastor's testimony that church had the financial wherewithal to redeem its property from a tax sale, in church's action seeking indemnification for the loss of its property due to a tax deed, where the issue of whether the church had the financial ability to redeem the property was not pled in its petition, and the issue of whether the church had the financial wherewithal did not bear on the issue of whether the church was without fault or negligence and thus

was entitled to seek indemnification. S.H.A. 35 ILCS 200/21–305. *Greater Pleasant Valley Church in Christ v. Pappas*, 2012 IL App (1st) 111853, 363 Ill. Dec. 687, 975 N.E.2d 713 (App. Ct. 1st Dist. 2012).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Routh v. Quinn*, 20 Cal. 2d 488, 127 P.2d 1, 149 A.L.R. 215 (1942); *Howerton v. Board of Com'rs of Tulsa County*, 1942 OK 127, 191 Okla. 169, 127 P.2d 173 (1942).
- 2 *Foster v. Malberg*, 119 Minn. 168, 137 N.W. 816 (1912).
- 3 *Fields v. Altman*, 193 Ala. 160, 69 So. 543 (1915).
- 4 *Williams v. Baker*, 209 Mass. 92, 95 N.E. 78 (1911); *Foster v. Malberg*, 119 Minn. 168, 137 N.W. 816 (1912).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 943

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale


B. Rights and Remedies of Purchaser

2. Against Tax Officers or Their Bond

§ 943. Liability for negligence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

Public officers are civilly liable in damages for injuries resulting from their failure to comply with the laws governing and regulating their powers and duties.¹ Thus, a tax sale purchaser may recover for any direct injury caused by negligence or want of skill in the execution of the duties of office but not for those remotely consequential injuries which grow out of a failure to gain or make profits.² Where a tax sale purchaser seeks to hold the tax officer liable for irregularities rendering the title defective, the doctrine of contributory or comparative negligence applies.³

Upon the principle that covenants given in a deed at a tax sale are official and not personal covenants, and not personally obligatory upon the officer, the purchaser whose title fails because of irregularity in the proceedings attendant upon the sale cannot hold the officer executing the deed personally responsible upon the covenants of good right to convey and the general warranty inserted therein where they are required by statute.⁴

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Footnotes

- ¹ [Am. Jur. 2d, Public Officers and Employees §§ 295, 329.](#)
- ² [Howley v. Scott, 123 Minn. 159, 143 N.W. 257 \(1913\).](#)
- ³ [Foster v. Malberg, 119 Minn. 168, 137 N.W. 816 \(1912\).](#)

4 [Williams v. Baker, 209 Mass. 92, 95 N.E. 78 \(1911\).](#)

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale


B. Rights and Remedies of Purchaser

3. Against Property Owner

§ 944. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 172](#) (Complaint, petition, or declaration—To cancel redemption of property—General form)

While the owner of land, as a condition of securing affirmative equitable relief against the holder of an invalid tax title, must reimburse the purchaser for outlays,¹ nevertheless, when the tax sale purchaser, perceiving that the deed is invalid, sues the owner to recover the tax paid as money paid, the rule of caveat emptor is strictly applied against the purchaser, denying any right of recovery, in the absence of a statute giving such right.² In such cases, while the fact that the purchaser gets nothing by the purchase may be such as to create an equity for reimbursement to the extent to which his or her money discharged taxes rightfully assessed against the land, this is only a bare equity, not enforceable by action, in the absence of a statute.³ The rule applies where the tax has been legally assessed but the proceedings to sell were defective, as well as where the assessment itself was unauthorized and void, or the tax had been previously paid.⁴ It has been applied even in equitable actions by the tax sale purchaser where, although as a result of the action his or her title was declared invalid, no affirmative relief was granted in favor

of the original owner.⁵ However, other courts allow the purchaser at a void tax sale to recover from the owner so much of the purchase price as was sufficient to pay the tax upon the property⁶ and to recover for taxes subsequently paid upon the property.⁷

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Footnotes

- 1 § 947.
- 2 Warden v. Ratterree, 215 Cal. 215, 9 P.2d 215, 86 A.L.R. 1204 (1932); Larson v. Peppard, 38 Mont. 128, 99 P. 136 (1909); Brewer v. Folsom Bros. Co., 43 Wyo. 433, 5 P.2d 283 (1931).
- 3 Williams v. Sands, 251 Mo. 147, 158 S.W. 47 (1913).
- 4 Holland v. Hotchkiss, 162 Cal. 366, 123 P. 258 (1912).
- 5 Warden v. Ratterree, 215 Cal. 215, 9 P.2d 215, 86 A.L.R. 1204 (1932); Holland v. Hotchkiss, 162 Cal. 366, 123 P. 258 (1912).
As to the rule when the owner is granted affirmative relief, see § 947.
- 6 Pinkerton v. J.L. Gates Land Co., 122 Wis. 471, 100 N.W. 841 (1904).
- 7 Slocum v. Peterson, 131 Wash. 61, 229 P. 20, 40 A.L.R. 1071 (1924).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale


B. Rights and Remedies of Purchaser

3. Against Property Owner

§ 945. Under statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 142](#) (Answer—Counterclaim—Tax sale certificate as lien against property)

Statutes may protect purchasers of property at delinquent tax sales and provide them methods of securing reimbursement from the owners when their tax titles fail.¹ Under these statutes, the purchaser of an invalid tax title may recover from the owner of the property a reimbursement for the amount of the delinquent taxes discharged by the buyer in the purchase of the land, the interest and statutory penalties thereon, together with subsequent taxes paid on the land, and the purchaser is usually given a lien upon the land or a right of subrogation to rights possessed by the taxing power.² While there is some authority for the view that such statutes are unconstitutional,³ their validity has generally been sustained.⁴ Under other statutes, the tax lien is made perpetual and is to be discharged only by payment of the tax in full, and if the tax title proves invalid by reason of some defect in the proceedings, the lien is transferred to the holder of the tax title so that he or she may remedy a defect in the title

by foreclosing the lien by appropriate judicial process.⁵ Such statutes are designed primarily to remedy abuses found to arise under statutes giving the purchaser the right of reimbursement from the owner.⁶

Notwithstanding that the invalidity of the tax title arises from failure in giving notice of redemption to comply with the statutory requirements in the giving of such notice, the purchaser may be entitled to enforce refunds against the delinquent taxpayer.⁷

Under some statutes, in an action by a tax sale purchaser seeking to confirm his or her title, if the defendant owner prevails, he or she is required to pay into the court the taxes and other penalties and interest for the use of the plaintiff.⁸

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Footnotes

- 1 [Downing v. Lucy, 121 Minn. 301, 141 N.W. 183 \(1913\).](#)
- 2 [Joliet Stove Works v. Kiep, 230 Ill. 550, 82 N.E. 875 \(1907\); Green v. McGrew, 35 Ind. App. 104, 72 N.E. 1049 \(1905\).](#)
- 3 [Malone v. Williams, 118 Tenn. 390, 103 S.W. 798 \(1907\).](#)
- 4 [Bennett v. Davis, 90 Me. 102, 37 A. 864 \(1897\).](#)
- 5 [Downing v. Lucy, 121 Minn. 301, 141 N.W. 183 \(1913\).](#)
- 6 [Downing v. Lucy, 121 Minn. 301, 141 N.W. 183 \(1913\).](#)
- 7 [Downing v. Lucy, 121 Minn. 301, 141 N.W. 183 \(1913\).](#)
As to the necessity of compliance with statutes requiring notice of expiration of redemption, see §§ [911](#) to [921](#).
- 8 [Smith v. Whitney, 105 Mont. 523, 74 P.2d 450 \(1937\).](#)

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale


B. Rights and Remedies of Purchaser

3. Against Property Owner

§ 946. Statute enacted after tax sale

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3071\(2\)](#), [3153](#), [3156](#), [3160](#), [3180\(1\)](#), [3180\(3\)](#), [3190](#) to [3192](#), [3194](#) to [3197](#), [3199](#), [3201](#), [3206](#)

Subsequent legislation taking away the rights of tax sale purchasers is strictly construed.¹ Statutes providing for refund or reimbursement to purchasers under invalid tax proceedings in effect create contract rights with respect to those acquiring tax titles after their enactment, and any attempt to enact a statute repealing or abolishing those provisions would as to them be an unconstitutional impairment of contract rights.²

Statutes providing generally that in actions by a landowner wherein the title of a tax sale purchaser is declared invalid the judgment should provide for the reimbursement by the owner of the amount paid by the purchaser, or that such amount be declared as a lien against the property, are not applicable where the tax sales involved antedated the statute.³ However, a statute providing that any judgment or decree setting aside any tax deed, or restoring the owner to possession, should provide that the claimant should pay to the party holding the tax deed the amount of all taxes and legal costs paid has been held applicable where a claimant brought an action for the possession of property after the enactment of such statute even though the tax deeds were issued prior to its enactment.⁴

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Footnotes

¹ [Downing v. Lucy](#), 121 Minn. 301, 141 N.W. 183 (1913).

- 2 *State v. Krahmer*, 105 Minn. 422, 117 N.W. 780 (1908).
3 *Byers v. Minnesota Commercial Loan Co.*, 118 Minn. 266, 136 N.W. 880 (1912).
4 *Mather v. Parkhurst*, 302 Ill. 236, 134 N.E. 91 (1922).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 947

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

B. Rights and Remedies of Purchaser

4. Reimbursement as Condition of Granting Owner Affirmative Relief

§ 947. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3180\(1\)](#), [3180\(3\)](#), [3201](#), [3206](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 154](#) (Complaint, petition, or declaration—By purchaser of unknowingly redeemed tax sale certificate—For refund of amount paid and costs)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 163](#) (Notice of claim—By purchaser at invalid tax sale—For refund of purchase price of property)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 164](#) (Order—For cancellation of tax deed after reimbursement to purchaser of money paid at tax sale)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 165](#) (Order—To show cause why refund of payment at invalid tax sale should not be made to purchaser of property)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 166](#) (Judgment or decree—For refund of payment made at invalid tax sale)

The doctrine of caveat emptor which generally precludes a tax sale purchaser from suing the owner for recovery of or reimbursement for taxes paid when the tax title proves to be invalid¹ does not apply where the owner seeks affirmative equitable relief against the purchaser at an invalid tax sale under the principle of equity that one who seeks equity must do equity.² Where

the owner seeks affirmative equitable relief against the holder of an invalid tax title by way of cancellation of the tax deed or certificate, the quieting of title to the land, or other relief which will in effect invalidate the tax sale and confirm his or her own title, and the taxes assessed against the owner for which the land was sold were valid, the owner must, as a condition precedent to obtaining the equitable relief sought, do equity by reimbursing the purchaser for the amount of taxes³ and penalties, interest, and costs justly chargeable against the land and paid by the purchaser, with legal interest from the time of such payment, from which may be deducted rents or other income from the land that the purchaser received while in possession under the tax title.⁴ The payment of such taxes and interest should be made within a reasonable time as fixed by the court's order.⁵

Generally, the statute of limitations cannot be invoked to defeat the tax purchaser's equitable right to reimbursement in such cases⁶ although there is authority holding to the contrary.⁷ When the purchaser has sold the land, the reimbursement of payments should be made to the grantee because the deed of the land operates as an assignment of the right to reimbursement.⁸ The rule does not, however, require reimbursement when the tax deed is absolutely void because the taxes were themselves invalid or were paid before the sale.⁹

When the tax purchaser makes no proof of the amount of taxes and disbursements that should be refunded, the court may grant the plaintiff relief without requiring reimbursement to the tax purchaser.¹⁰

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Footnotes

- 1 § 944.
- 2 *Holland v. Hotchkiss*, 162 Cal. 366, 123 P. 258 (1912); *Barlow v. Lonabaugh*, 61 Wyo. 118, 156 P.2d 289 (1945).
- 3 *Timms v. Scott*, 248 Ala. 286, 27 So. 2d 487 (1946); *Warden v. Ratterree*, 215 Cal. 215, 9 P.2d 215, 86 A.L.R. 1204 (1932); *Merewood, Inc. v. Denshaw*, 139 N.J. Eq. 182, 50 A.2d 459 (Ch. 1947); *Don S. Co., Inc. v. Roach*, 168 W. Va. 605, 285 S.E.2d 491 (1981); *Barlow v. Lonabaugh*, 61 Wyo. 118, 156 P.2d 289 (1945).
- 4 *Clayton v. Schultz*, 18 Cal. 2d 328, 115 P.2d 446 (1941); *Larson v. Peppard*, 38 Mont. 128, 99 P. 136 (1909); *Walsh v. Blair*, 89 Misc. 2d 989, 393 N.Y.S.2d 236 (County Ct. 1977).
- 5 *Larson v. Peppard*, 38 Mont. 128, 99 P. 136 (1909).
- 6 *Denman v. Steinbach*, 29 Wash. 179, 69 P. 751 (1902).
As to application of the statute to bar an equitable remedy, see *Am. Jur. 2d, Equity* § 161.
- 7 *Laffitte v. City of Superior*, 142 Wis. 73, 125 N.W. 105 (1910).
- 8 *Glos v. O'Toole*, 173 Ill. 366, 50 N.E. 1063 (1898).
- 9 § 948.
- 10 *Hughey v. Winborne*, 44 Fla. 601, 33 So. 249 (1902).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

B. Rights and Remedies of Purchaser

4. Reimbursement as Condition of Granting Owner Affirmative Relief

§ 948. Where tax was void or had been paid

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3180\(1\)](#), [3180\(3\)](#), [3201](#), [3206](#)

If the defect or illegality asserted as the basis of the equitable relief sought by the owner is not merely in the proceedings for the sale of the land, but is of such a nature which renders the tax itself invalid, or if the tax for which the land was sold had previously been paid by the owner, or if there was no tax due, a court of equity will not make reimbursement of the tax to the titleholder a condition for annulling the tax sale.¹ There is in such case no tax and, hence, no equitable reason for requiring the owner to reimburse the tax sale purchaser, who paid the tax, before the cloud upon the title made by the tax sale can be removed.² However, the incidence of mere irregularities in the assessment or a slight excess in the amount of the tax over what should properly be assessed is not a ground for excusing the owner from repaying the amount of the tax to the purchaser.³

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Footnotes

- ¹ [Holland v. Hotchkiss](#), 162 Cal. 366, 123 P. 258 (1912); [Morrill v. Lovett](#), 95 Me. 165, 49 A. 666 (1901).
- ² [Morrill v. Lovett](#), 95 Me. 165, 49 A. 666 (1901).
- ³ [Fenton v. Minnesota Title Insurance & Trust Co.](#), 15 N.D. 365, 109 N.W. 363 (1906).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

B. Rights and Remedies of Purchaser

4. Reimbursement as Condition of Granting Owner Affirmative Relief

§ 949. Effect of purchaser's fraud

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3180\(1\)](#), [3180\(3\)](#), [3201](#), [3206](#)

A fraud by the purchaser at an invalid tax sale, such as participation in an unlawful combination of bidders to stifle competitive bidding, may preclude such purchaser from asserting the equitable principle which would otherwise entitle him or her to reimbursement for taxes paid as a condition of granting the owner relief against the invalid tax title.¹ However, there is contrary authority, pursuant to which the owner is required to pay or tender to the purchaser merely the amount paid at the sale, without interest from that date, thereby depriving the defendant of any profit in the transaction but at the same time compelling the owner, as a condition to equitable relief, to pay what he or she should have paid as his or her share of the public burden of taxes.²

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Footnotes

- ¹ [Nichols v. Russell](#), 141 Mo. App. 140, 123 S.W. 1032 (1909).
² [Noble v. McIntosh](#), 23 N.D. 59, 135 N.W. 663 (1912).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

B. Rights and Remedies of Purchaser

4. Reimbursement as Condition of Granting Owner Affirmative Relief

§ 950. Statutory provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3002](#), [3180\(1\)](#), [3180\(3\)](#), [3201](#), [3206](#)

Statutes may require the owner to tender and pay into court the amount of the taxes, interest, penalties, and costs, as a condition of the right to maintain a suit to recover land which has been sold for nonpayment of taxes, or to quiet title thereto.¹ Such a provision, applicable whenever any action or special proceeding is commenced to set aside any sale of lands for the nonpayment of taxes, or to cancel any tax certificate, or to restrain the issuing of any tax certificate or tax deed, or to set aside any tax, for any error or defect going to the validity of the assessment and affecting the groundwork of such tax, does not require a tender or payment of the tax as a condition of the maintenance of an action to enjoin the issuance of a tax deed on the grounds that the right to a tax deed had become barred by lapse of time and that a portion of the property had been redeemed from the lien of the tax certificate.² Ejectment is not an action to set aside a tax deed within statutes providing that a judgment or decree of the court setting aside a tax deed should require the plaintiff to pay to the parties holding under the deed all taxes, interest, and penalties.³

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Footnotes

- ¹ [Numitor Gold Mining Co. v. Katzer](#), 83 Cal. App. 161, 256 P. 464 (3d Dist. 1927) (disapproved of on other grounds by, [Bray v. Jones](#), 20 Cal. 2d 858, 129 P.2d 357 (1942)); [Smith v. Whitney](#), 105 Mont. 523, 74 P.2d 450 (1937); [Hibernia Commercial & Savings Bank v. McArthur](#), 121 Or. 413, 255 P. 466 (1927); [Service Inv. Co. v. Dorst](#), 232 Wis. 574, 288 N.W. 169, 134 A.L.R. 539 (1939).
- ² [Service Inv. Co. v. Dorst](#), 232 Wis. 574, 288 N.W. 169, 134 A.L.R. 539 (1939).

3 [Pinkerton v. J.L. Gates Land Co., 118 Wis. 514, 95 N.W. 1089 \(1903\).](#)

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72 Am. Jur. 2d State and Local Taxation § 951

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

B. Rights and Remedies of Purchaser

4. Reimbursement as Condition of Granting Owner Affirmative Relief

§ 951. Measure of recovery for improvements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3206

Where one claiming under a tax deed adjudged invalid has in good faith made improvements on the land purchased, the measure of recovery to which he or she is entitled is not the cost of making the improvements or their particular value to the person making them or their value per se but their value as measured by the enhancement in the value of the land to the true owner thereof,¹ estimated as of the date of the judgment or decree.² In the absence of any evidence as to any increase in the market value of the land by reason of the improvements or the value of the improvements, no recovery can be had on that account.³

Interest on the value of the improvements is not recoverable.⁴

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Footnotes

- ¹ [Krahenbuhl v. Clay](#), 346 Mo. 111, 139 S.W.2d 970, 129 A.L.R. 1344 (1940).
- ² [De Sembly v. Dedman](#), 161 Ky. 128, 170 S.W. 529 (1914).
- ³ [Krahenbuhl v. Clay](#), 346 Mo. 111, 139 S.W.2d 970, 129 A.L.R. 1344 (1940).
- ⁴ [Hapney v. Dunn](#), 26 Colo. App. 412, 142 P. 423 (1914).

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American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

C. Time for Bringing Suit for Relief

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3160 to 3162(4), 3192

A.L.R. Library

A.L.R. Index, Tax Sales

West's A.L.R. Digest, [Taxation](#)  3160 to 3162(4), 3192

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72 Am. Jur. 2d State and Local Taxation § 952

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

C. Time for Bringing Suit for Relief

§ 952. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3160 to 3162(4), 3192

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[Void tax deed, tax sale certificate, and the like, as constituting color of title, 38 A.L.R.2d 986](#)

A tax deed, although invalid or void, is generally regarded as color of title within the meaning of the general statute of limitations giving title to land by prescription after open, notorious, continuous, uninterrupted, exclusive, hostile, and adverse possession of it under color of title for a designated number of years.¹

The statute of limitations runs against an owner as long as the notice of sale contains the name of the owner or occupant of each parcel of real property to be sold as such name appears on the assessment roll.²

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Footnotes

¹ [Am. Jur. 2d, Adverse Possession § 138.](#)

² [Taccone v. DiRenzi, 92 Misc. 2d 786, 401 N.Y.S.2d 722 \(Sup 1978\).](#)

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72 Am. Jur. 2d State and Local Taxation § 953

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

C. Time for Bringing Suit for Relief

§ 953. Short statutes of limitation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3160 to 3162(4), 3192

"Short statutes of limitation," the object of which is to protect rights acquired under sales of real estate for nonpayment of taxes, fix a comparatively short period of time running in favor of the holder of the tax title, after which the validity of the holder's title cannot be questioned for any irregularity in the proceeding under which the land was sold.¹

While short statutes of limitation are not construed with that liberality exhibited toward the general statutes of limitation,² there is no question as to the power of the legislature to enact such statutes.³

All that is necessary for a person in possession for the statutory period to show in order to make out a prima facie case is that he or she or those under whom he or she claims held under a deed from a collector of taxes which appears on its face to be a valid deed of land sold for nonpayment of taxes.⁴ While the courts generally do not construe these statutes as intended to cut off the right to attack the validity of a tax title which is void because of jurisdictional defects in the conduct of the sale,⁵ since they are statutes of limitation and not merely curative statutes, short statutes of limitation may be made effective to cut off the right to attack the tax title even for jurisdictional defects after the expiration of the time limited in the statute.⁶ A tax purchaser is not required to have possession of the land to start the running of the short statute of limitations.⁷

A short statute of limitations does not apply when the purchaser stands in such a relation to the land, or to the owner, that he or she has no right to buy in the property in his or her own name or is otherwise guilty of fraud.⁸

Footnotes

- 1 Herron v. Swarts, 1960 OK 53, 350 P.2d 314 (Okla. 1960); Champ v. Stewart, 181 Or. 300, 181 P.2d 780 (1947).
- 2 Clark v. Duncanson, 1920 OK 289, 79 Okla. 180, 192 P. 806, 16 A.L.R. 315 (1920).
- 3 Turpin v. Lemon, 187 U.S. 51, 23 S. Ct. 20, 47 L. Ed. 70 (1902); Buck v. Triplett, 159 Fla. 772, 32 So. 2d 753 (1947); Meigs v. Roberts, 162 N.Y. 371, 56 N.E. 838 (1900); Delmond v. Board Investors Co., 35 Ohio Op. 419, 48 Ohio L. Abs. 293, 74 N.E.2d 376 (Ct. App. 8th Dist. Cuyahoga County 1947), judgment aff'd, 148 Ohio St. 301, 35 Ohio Op. 296, 74 N.E.2d 373 (1947).
- 4 Florida Finance Co. v. Sheffield, 56 Fla. 285, 48 So. 42 (1908); National Surety Corp. v. Smith, 168 Or. 265, 114 P.2d 118 (1941), on reh'g, 168 Or. 265, 123 P.2d 203 (1942); Leysath v. Leysath, 209 S.C. 342, 40 S.E.2d 233 (1946).
- 5 § 956.
- 6 Saranac Land & Timber Co. v. Roberts, 177 U.S. 318, 20 S. Ct. 642, 44 L. Ed. 786 (1900).
As to curative statutes, generally, see §§ 860 to 862.
- 7 Shaffer v. Mareve Oil Corp., 157 W. Va. 816, 204 S.E.2d 404 (1974).
- 8 Dickinson v. Arkansas City Imp. Co., 77 Ark. 570, 92 S.W. 21 (1906).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 954

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

C. Time for Bringing Suit for Relief

§ 954. Tolling statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3160 to 3162(4), 3192

The commencement of an action to obtain relief against an invalid tax deed within the time limited by the statute tolls the running of the statute, and where the limitation provision applies to actions either by the former owner or the tax deed purchaser, and one or the other of them commences an action assailing the validity of the tax deed, the action stops the running of the statute of limitations against all defenses which the defendant may interpose.¹

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¹ [Clark v. Duncanson](#), 1920 OK 289, 79 Okla. 180, 192 P. 806, 16 A.L.R. 315 (1920).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

C. Time for Bringing Suit for Relief

§ 955. Defective descriptions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3160 to 3162(4), 3192

Generally, the special or short limitation periods provided for the purpose of barring attacks on tax sales are not applicable to protect tax titles based on such sales, if the description in the tax assessment or tax deed does not describe the property purported to have been sold for nonpayment of taxes, or the description is so vague, uncertain, or erroneous that the property in question cannot be identified.¹ Such statute is not applicable where the description of the land in the tax deed varies materially from that in the assessment.² On the other hand, a defective description in a tax assessment or tax deed may be protected by the limitation provision applicable to tax titles where such description is sufficient reasonably to identify the property sold for nonpayment of taxes or is sufficient to furnish the means of identification; evidence outside the record is admissible for that purpose.³ Where a defective description of property in the assessment, erroneous as to the name of the owner and as to the property itself, is corrected by the tax collector prior to the tax sale so that it is sufficient to identify the land, the limitation provision applies to preclude an action to annul the sale after the expiration of the prescriptive period.⁴

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Footnotes

- 1 [Brinkley v. Halliburton](#), 129 Ark. 334, 196 S.W. 118, 1 A.L.R. 1225 (1917); [Jackson v. Irion](#), 196 La. 728, 200 So. 18, 133 A.L.R. 566 (1941); [Turpen v. Johnson](#), 26 Wash. 2d 716, 175 P.2d 495 (1946).
- 2 [Saddler v. Smith](#), 54 Fla. 671, 45 So. 718 (1908); [Turpen v. Johnson](#), 26 Wash. 2d 716, 175 P.2d 495 (1946).
- 3 [Turpen v. Johnson](#), 26 Wash. 2d 716, 175 P.2d 495 (1946).
- 4 [Hollingsworth v. Poindexter](#), 156 La. 621, 100 So. 790 (1924).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

C. Time for Bringing Suit for Relief

§ 956. Tax deed void on its face

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3160 to 3162(4), 3192

A tax deed which follows the ordinary form for such deeds and which is executed by an official having general authority to make such deeds and which purports by apt words to convey land either described accurately or so referred to as to permit of its accurate identification will be color of title to such land under a general statute of limitations although such deed was absolutely void and although the cause of such invalidity appears upon the face of the deed.¹ With respect to special or short statutes of limitation, although some courts have applied their bar to holders of tax titles to possession under a deed that is void on its face,² usually upon the theory that such a deed is color of title, special statutes of limitation generally do not run where, by reason of some jurisdictional defect, the tax deed is absolutely void upon its face.³ Under this rule, a tax deed is void on its face when it so imperfectly describes the land which it purports to convey that the premises cannot be identified,⁴ or when it is executed by an officer who has no authority to execute it,⁵ or when the tax deed fails to show the acknowledgment required by statute or is defectively acknowledged.⁶ A tax deed is void and therefore not subject to the statute of limitations, applicable to the recovery of land for which a tax deed has been issued, when the taxing entity had no jurisdiction or authority to issue the deed.⁷

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Footnotes

- ¹ Am. Jur. 2d, Adverse Possession § 139.
- ² Dickinson v. Arkansas City Imp. Co., 77 Ark. 570, 92 S.W. 21 (1906); Carney v. Anderson, 214 Miss. 504, 58 So. 2d 13, 38 A.L.R.2d 981 (1952); Greenleaf v. Bartlett, 146 N.C. 495, 60 S.E. 419 (1908); Herron v. Swarts, 1960 OK 53, 350 P.2d 314 (Okla. 1960).

- 3 Davison v. Gowen, 69 Nev. 273, 249 P.2d 225 (1952); Batelle v. Knight, 23 S.D. 161, 120 N.W. 1102 (1909);
Denny v. Stevens, 52 Wyo. 253, 73 P.2d 308, 113 A.L.R. 1337 (1937).
4 § 955.
5 Denny v. Stevens, 52 Wyo. 253, 73 P.2d 308, 113 A.L.R. 1337 (1937).
6 Mathews v. Blake, 16 Wyo. 116, 92 P. 242 (1907).
7 Lake Canal Reservoir Co. v. Beethe, 227 P.3d 882 (Colo. 2010).

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

C. Time for Bringing Suit for Relief

§ 957. Jurisdictional defects not apparent from deed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3160 to 3162(4), 3192

The rule that possession under a void tax deed does not start the running of the short statute of limitations, which bars action for the recovery of real property sold for nonpayment of taxes unless brought within a certain time after the date of sale, is not limited to cases in which the deed is void upon its face.¹ Normally, if there were jurisdictional or fundamental defects in the sale rendering the proceedings absolutely void, the statute will not sustain the tax deed, irrespective of whether it is or is not regular and valid on its face.² The short statute of limitations is intended to bar actions to set aside a tax deed for all defects defined in the statute, including jurisdictional defects.³

Under the general rule, a special short-term statute of limitations does not run where—

- the land was not subject to taxation or to the taxes for which it was sold.⁴
- the taxes for which the land was sold were never assessed.⁵
- the taxes actually were paid and there had been an incorrect duplicated assessment.⁶
- the assessment was void.⁷
- the tax deed was executed without giving the statutory notice of the expiration of the right to redeem.⁸
- the tax deed was executed without giving the notice of the application for a tax deed.⁹

Generally, a purchaser at a tax sale which is void because of the fact that the taxes for which the sale was made had in fact been paid before the sale does not acquire a title by mere possession under the void deed for the period of the statute of limitations protecting tax titles which cannot be attacked by the original owner.¹⁰ In addition, the purchaser does not acquire title under such a statute if the land has been redeemed from the sale.¹¹

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Footnotes

- 1 [Roberts v. First Nat. Bank of Fargo](#), 8 N.D. 504, 79 N.W. 1049 (1899).
- 2 [Small v. Hull](#), 96 Mont. 525, 32 P.2d 4 (1934); [Davison v. Gowen](#), 69 Nev. 273, 249 P.2d 225 (1952); [Harris v. Mason](#), 120 Tenn. 668, 115 S.W. 1146 (1909).
- 3 [Shaffer v. Mareve Oil Corp.](#), 157 W. Va. 816, 204 S.E.2d 404 (1974).
- 4 [Winn v. City of Little Rock](#), 165 Ark. 11, 262 S.W. 988 (1924); [Hoskins v. Illinois Cent. R. Co.](#), 78 Miss. 768, 29 So. 518 (1901); [Hahn v. Walworth County](#), 14 Wis. 2d 147, 109 N.W.2d 653, 94 A.L.R.2d 618 (1961).
- 5 [Gibson v. Smith](#), 24 S.D. 514, 124 N.W. 733 (1910).
- 6 [Cameron Estates v. Deering](#), 308 N.Y. 24, 123 N.E.2d 621 (1954).
- 7 [Power v. Kitching](#), 10 N.D. 254, 86 N.W. 737 (1901).
- 8 [Smith v. Huber](#), 224 Iowa 817, 277 N.W. 557, 115 A.L.R. 131 (1938).
- 9 [Small v. Hull](#), 96 Mont. 525, 32 P.2d 4 (1934).
- 10 [Smith v. Cox](#), 83 S.C. 1, 65 S.E. 222 (1909).
- 11 [Cornelius v. Ferguson](#), 23 S.D. 187, 121 N.W. 91 (1909); [Hoffmann v. Peterson](#), 123 Wis. 632, 102 N.W. 47 (1905).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 958

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

C. Time for Bringing Suit for Relief

§ 958. Noncompliance with statutory requirement as to notice before tax deed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3160 to 3162(4), 3192

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[Void tax deed, tax sale certificate, and the like, as constituting color of title, 38 A.L.R.2d 986](#)

[Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021](#)

The distinction between jurisdictional and non-jurisdictional defects, which is a recognized principle of the interpretation of short statutes of limitation generally,¹ applies with respect to whether a failure to comply with statutory requirements as to the giving of notice prior to the issuance of a tax deed will affect the running of the statutory limitation period, with the result that if the particular act of noncompliance is a jurisdictional defect, the tax title may be attacked even though the statutory period has expired, but if such act is non-jurisdictional in nature, the passage of the statutory period bars an attack based thereon.² Thus, where a tax certificate holder gives notice of an application for a deed by publication as provided by statute, but fails to make an affidavit in lieu of mailing, negating such holder's knowledge of the residence or place of business of the owner of the property covered by the deed applied for, as the statute requires, a jurisdictional defect is constituted which avoids the statute of limitations so that the deed is subject to cancellation.³ Moreover, where there has been a complete failure to give some notice required by applicable statutes in connection with proceedings leading up to a tax sale or the issuance of a tax

deed, the defect is jurisdictional, and an attack on the tax title which is based on such failure will not be barred by an otherwise applicable short statute of limitations.⁴

Attacks on tax titles based on noncompliance with statutory requirements relative to notice, short of a complete failure of notice, have been held to constitute jurisdictional defects where—

— envelopes containing notices of the intention to apply for tax deeds were misaddressed, there was insufficient affidavit of service, and no mention was made in notices served by publication of the names of the owners of the property.⁵

— there was a failure to publish notice of the tax sale for the required time prior to the sale.⁶

— there was a lack of an affidavit, required as a condition to service by publication, that the owners were unknown.⁷

— the taxpayer did not receive notice.⁸

— the notice was inadequate.⁹

Non-jurisdictional defects include the fact that the sheriff failed to attach proof of the notice to the deed or to publish a notice of the redemption period¹⁰ and also the failure to publish properly a statutory notice of the tax sale.¹¹

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Footnotes

- 1 § 953.
- 2 *Johnson v. Johnson*, 207 Ark. 1015, 183 S.W.2d 783 (1944); *Smith v. Huber*, 224 Iowa 817, 277 N.W. 557, 115 A.L.R. 131 (1938); *Miller v. Murphy*, 119 Mont. 393, 175 P.2d 182 (1946).
- 3 *Robinson v. Rockett*, 1954 OK 278, 275 P.2d 712 (Okla. 1954).
- 4 *Small v. Hull*, 96 Mont. 525, 32 P.2d 4 (1934); *Westerheide v. Wilcox*, 1942 OK 131, 190 Okla. 382, 124 P.2d 409 (1942); *Elliott v. Clement*, 175 Or. 44, 149 P.2d 985 (1944).
- 5 *Miller v. Murphy*, 119 Mont. 393, 175 P.2d 182 (1946).
- 6 *Welborn v. Whitney*, 1942 OK 142, 190 Okla. 630, 126 P.2d 263 (1942).
- 7 *Mote v. Thompson*, 156 S.W. 1105 (Tex. Civ. App. Amarillo 1913), writ refused, (Nov. 20, 1913).
- 8 *Rast v. Terry*, 532 S.W.2d 552 (Tenn. 1976).
- 9 *Shaffer v. Mareve Oil Corp.*, 157 W. Va. 816, 204 S.E.2d 404 (1974).
- 10 *Otto & Harkson Realty Co. v. Josephine County*, 207 Or. 199, 295 P.2d 875 (1956).
- 11 *Hough v. Perkins County*, 72 S.D. 236, 32 N.W.2d 632 (1948).

End of Document

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72 Am. Jur. 2d State and Local Taxation § 959

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

C. Time for Bringing Suit for Relief

§ 959. Necessity of taking possession of land in order to invoke statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3160 to 3162(4), 3192

Although a tax deed is valid upon its face and the invalidity arises because of some latent irregularity in the proceedings, possession under the deed is essential to the assertion of the bar of the statute because the statute is a general statute of limitations concerning land held in adverse possession, and consequently, there must be adverse possession if the statute is to have any application.¹ Under this view, a statute limiting the time in which actions to attack the validity of a tax deed must be brought does not apply to prevent an owner in possession from setting up the invalidity of a tax deed in a proceeding brought against the owner by the holder of the deed to enforce the right to possession under the sale.²

A void tax deed does not carry with it constructive possession, whether the land described in the deed is occupied or unoccupied.³

Where the purchaser of a defective tax title has remained in possession of the premises a sufficient length of time to have barred an action to set aside the tax title by the former owner, his or her title is good for all purposes and cannot be attacked on the ground of illegality by the former owner even as a defense.⁴

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Footnotes

- ¹ [Nehasane Park Ass'n v. Lloyd](#), 167 N.Y. 431, 60 N.E. 741 (1901).
- ² [Taylor v. Danley](#), 83 Kan. 646, 112 P. 595 (1911); [Harris v. Mason](#), 120 Tenn. 668, 115 S.W. 1146 (1909); [Buty v. Goldfinch](#), 74 Wash. 532, 133 P. 1057 (1913).
- ³ [Dickinson v. Arkansas City Imp. Co.](#), 77 Ark. 570, 92 S.W. 21 (1906).

4 [Millikin v. Lockwood, 80 Kan. 600, 103 P. 124 \(1909\); Brunette v. Norber, 130 Wis. 632, 110 N.W. 785 \(1907\).](#)

End of Document

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72 Am. Jur. 2d State and Local Taxation § 960

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State and Local Taxation

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Part Eleven. Sale of Land for Nonpayment of Taxes

LXII. Rights and Remedies in Case of Invalid Sale

C. Time for Bringing Suit for Relief

§ 960. Necessity of taking possession of land in order to invoke statute—Where lack of notice was basis of noncompliance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3160 to 3162(4), 3192

A.L.R. Library

[Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021](#)

When noncompliance with a statutory notice requirement constitutes a jurisdictional defect, the fact that the purchaser was in possession of the land in question under a tax deed does not put the statute into operation, where this would not have been the effect if the purchaser had not been in such possession, and the limitation set up by the statute is not referable in any way to the occupancy or possession of the land.¹ Where, pursuant to a county treasurer's deed certificate which was void for lack of notice, a tax vendee entered possession of the surface of a parcel of land and remained in possession for a period longer than the period provided by the short statute of limitations, but made no attempt to sever any portion of the mineral estate, the vendee is deemed not to have established title as to the mineral interest.² On the other hand, a tax deed coupled with possession may be deemed just as effective to bar an owner as the open, notorious, adverse, and hostile possession which perfects the title of a tax purchaser when he or she so possesses the premises for the entire period of the statute of limitations for adverse possession.³ Where the only attack made by the plaintiff on the tax deed in question was the failure of the tax collector, prior to the execution of the deed of the land to the state, to send to the plaintiff as the last assessed owner of the land, a notice that the property was

about to be sold for taxes, as required by statute, an action to quiet title would be barred by a statute providing that proceedings based on alleged irregularities of tax deeds to the State or the proceedings leading up to such deeds can be commenced only within one year of the time that the deed to the State was recorded.⁴

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Footnotes

- 1 [Kaneaster v. Welch](#), 183 Or. 547, 194 P.2d 410 (1948).
- 2 [Walker v. Hoffman](#), 1965 OK 36, 405 P.2d 57 (Okla. 1965).
- 3 [Mills v. Bundy](#), 105 Neb. 470, 181 N.W. 184 (1920).
- 4 [Tannhauser v. Adams](#), 31 Cal. 2d 169, 187 P.2d 716, 5 A.L.R.2d 1015 (1947).

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